PHARMACY ROBBERY LEGISLATION

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 20, S. 661, S. 954, S. 1025, S. 1339, and H.R. 2034

BILLS TO AMEND TITLE 18 OF THE UNITED STATES CODE MAKING ROBBERY OF A CONTROLLED SUBSTANCE A FEDERAL CRIME

JUNE 17, 1982

Serial No. J-97-120

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
11-218 O
WASHINGTON : 1982

S521-12

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PHARMACY ROBBERY LEGISLATION

THURSDAY, JUNE 17, 1982

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2228, Dirksen Senate Office Building, Senator Charles McC. Mathias, Jr. (chairman of the subcommittee) presiding.

Also present: Senators Heflin and Grassley.

Staff present: Ralph Oman, staff director; Linda Colancecco, chief clerk; Kimberly Austin, staff assistant; and Kevin Mills, counsel for Senator Specter.

OPENING STATEMENT OF SENATOR HOWELL HEFLIN

Senator **HEFLIN**. The hearing will come to order. Senator Mathias has been unavoidably delayed and will be here shortly to take over the Chair. There are some witnesses here who do have pressing business otherwise. We will get started.

Today we have an opportunity to address a widespread, serious, ever-growing crime phenomenon—pharmacy theft. Recently, I introduced Senate bills 954 and 1339, which would subject pharmacy theft to Federal criminal prosecution. I am delighted that this issue has finally come to the forefront of the general fight against violent crime in this country. The emphasis we now place on this problem in recognition of pharmacy theft as a national concern is in large part due to the legislative guidance of the distinguished chairman of the Subcommittee on Criminal Law, Senator Mathias. I am encouraged by his efforts and the efforts of his staff to assemble such an outstanding panel of witnesses. I am especially encouraged that many of my distinguished colleagues in the Senate have introduced legislation which is similar to my own on drug theft and have decided to share their own views on this matter with the Criminal Law Subcommittee.

I thank the distinguished chairman for allowing us all this opportunity to address this issue. Over 1 year ago, I asked my colleagues in the Senate to join with me in enacting legislation to deter violent crime in this country. Since then violent crime in general has become the focal point of controversy, debate, and enormous bipartisan legislation in this session of Congress. But no war against crime would be complete without a concerted effort to reduce the number of drugstore thefts and robberies.

It is absolutely necessary that any Federal program to combat crime include tough new measures to deter the increasing amount of assaults and deaths related to pharmacy theft. It is ironic that the problem of pharmacy theft stems in part from the success that we have enjoyed in combating crime in other areas. For many years now, our Federal agents from the Drug Enforcement Administration and the Federal Bureau of Investigation have waged an increasingly effective campaign to halt the flow of illegal drugs in our Nation's cities and suburbs. However, because our Federal agents have been so effective in disrupting the illegal drug trade on our streets, the drug pushers have now begun to resort to local retail pharmacies to continue their crime. To make matters worse, drug traffickers have discovered our Federal agents are not legally authorized to prosecute this crime.

Since Congress passed the Comprehensive Drug Abuse, Prevention and Control Act of 1970, robberies to obtain federally controlled drugs have increased by 100 percent. The result of the lack of Federal laws to prosecute for pharmacy theft has done more than to simply encourage this crime of theft. It has quite literally placed pharmacists and druggists at physical risk. Pharmacists have been murdered, assaulted, robbed, and even tortured until they comply with the demands of their assailant. I fear this phenomenon will flourish if we do not take corrective action now.

It threatens not only our pharmacists but the free marketing of our Nation's health care as well. We live under this threat even though the Federal Government has habitually maintained an interest in laws involving controlled substances. Pharmacies are licensed under Federal law. Manufacture, distribution, disposal, and even possession of controlled substances are subject to Federal criminal prosecution. Certainly there is a Federal interest in this area. Yet, no Federal law authorizes prosecution for robbery of controlled substances.

It is quite clear that our society and especially our retail druggists need the protection of Federal crime fighters. Senate bill 954, which I introduced in April of 1981, is not the only legislation now in the Senate which makes pharmacy robbery a Federal crime. There are now at least six other pieces of legislation with similar provision. I am encouraged by this. I hope these hearings will provide the necessary catalytic agent to move some form of this legislation through Congress.

I ask each of my fellow Senators on this subcommittee to examine the alarming trend of drug thefts from our Nation's pharmacies and to add their support to this crime-fighting legislation.

We are delighted to have some Members of Congress with us. Senator Mathias is now here—if you will come and assume the Chair.

STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

Senator **Mathias**. I thank the distinguished Senator from Alabama for getting us started in a timely way.

We have a distinguished panel of witnesses. So, I will not detain the hearing long. I suppose, Judge Heflin, the first drugstore robbery that I recall was in Steiner's Drug Store in Frederick, Md. That was one of those old-fashioned drugstores. It did not have a soda fountain. It did not even sell a Hershey bar. It was strictly a drugstore. They had those bottles in the window with red and blue water in them. The proprietor was Dr. Harry Steiner. He was about 4 feet 6, I think, 80-odd years old. His face was a little bit dried up and frail. A robber came in and pointed a gun at him. In a quavering voice he said he never kept any money in the store. So, the robber put the gun back in his pocket and walked out.

I wish that could be the case in drugstores today. But, obviously, that whole scene is from a bygone age.

Senator **Heflin**. Might I interrupt to inquire of you as to whether or not you hope that they kept no money in the drugstore or that the robber walked away?

Senator **Mathias**. Well, the nice part of the story is that the robber walked away. But that is obviously not a scene today that is going to be replicated. Times have changed. Instead of walking away, what happens too often is that they take the gun out and they shoot the pharmacist right there. That is the contemporary scene. The Dr. Harry Steiners do not survive that.

In Maryland we have less happy stories. We have the case of Dr. MacLarty, who was gunned down in Linthicum and killed. So, there is an appeal for help. I think Congress ought to respond to it.

In 1970 we enacted perhaps the most important statute relating to drug enforcement since the passage of the Harrison Act in 1916. That was the comprehensive Drug Abuse Prevention and Control Act.

Title II of this act is the Controlled Substances Act, which is our main weapon at the Federal level for fighting the war on drugs. But, as we have succeeded in jailing pushers and cutting off some of their illicit sources, we have unwittingly redirected their attention to the legitimate repositories of drugs, which is drugstores. They are open and accessible, and they make easy targets.

Title II covers a broad range of criminal activity. It covers a person who manufactures, distributes, dispenses, or possesses a controlled substance, with the intent to distribute; and it covers a person who knowingly or intentionally acquires or obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge. But it does not cover a drug dealer who knocks over a drugstore and kills the man or woman behind the counter to get the drugs.

Since 1970, armed robberies of pharmacies have increased by over 150 percent. The street value of drugs that are stolen in these armed robberies of pharmacies is estimated in the hundreds of millions. And one in five robberies has resulted in death or injury.

The bills we will discuss today, Senate bills 20, 661, 954, 1025, 1339, and House bill 2034, all address this problem. They would amend title 18 of the United States Code to make a robbery of a controlled substance a Federal crime.

[Bills referred to appear in the appendix.]

I want to thank in advance the witnesses for being here today. We appreciate your help in our effort to address the problem. We look forward to your testimony.

Let me say before I defer to Senator Grassley that we are going to hold this record open for 2 weeks. We are going to ask everyone to limit oral remarks to 5 minutes so that we can get all the witnesses heard and ask a few questions. Senator Grassley?

STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. First of all, Mr. Chairman, I want to commend you for holding this hearing. Your diligence, as always, has led us here to an airing of the issue. Obviously, I have an interest in this, too, as you suggested. One of the bills that has been introduced is S. 1025, the Pharmacy Protection and Violent Offender Control Act of 1982. I introduced this bill on April 29, 1981. The bill currently has 15 cosponsors. This bill will have the effect of providing greater deterrents to the rash of robberies, assaults, and senseless murders in retail pharmacies that have plagued this country in the last decade. At present, the terrorism of an entire class of health-care professionals, the retail pharmacists, continues unabated. Specifically, the bill that I have introduced would make it a Federal offense to rob any pharmacy of a controlled substance.

Robbery of a controlled substance is the only method of obtaining a controlled substance that is not provided for under Federal law. Congress has provided that a person who manufactures, distributes, dispenses, or possesses a controlled substance with intent to distribute is subject to Federal criminal prosecution and penalties under section 401 of the Controlled Substances Act of 1970.

Similarly, if a person knowingly or intentionally acquires or obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge, section 403 of the act provides Federal jurisdiction and penalties. The act, however, is silent with reference to the acquisition of drugs through violence. The implication is that this is of no Federal concern. Obviously, this hearing is being held because several of us feel that this is a Federal concern.

This is simply not the message that we in Congress want to convey concerning the grim siege being waged upon this Nation's pharmacies. Since 1973, when this type of legislation was first introduced, armed robberies to obtain federally controlled drugs from pharmacies have increased by 150 percent, far in excess of the national robbery rate, including an increase of 33 percent for 1979, the most recent year for which statistics are available. Monetary gain from sale of the stolen drugs is only one of the elements of the terrorism caused by pharmacy robbery. One in five robberies results in death or some injury to victims.

Congress has responded to the havoc created by this terrorism with a total of 24 bills introduced in the House and Senate this session alone. I commend my colleagues on their initiative in seeking a solution to this menace and have added my own version of a suitable punishment for drug-related crimes in pharmacies.

Federal criminal jurisdiction over crimes of violence and other unlawful conduct relating to controlled substances would provide for more uniform law enforcement action and punishment of violators. As it is now, punishment of drug-related crimes in pharmacies rests upon the varying provisions of State criminal laws. A Federal law would provide a sanction universally applicable in this country that would be more readily understood and more uniformly applied.

Recently I had the opportunity to address the National Association of Retail Druggists at their annual legislative conference. At the conference, independent retail pharmacists related their own experiences, and those of others, with pharmacy crime. I asked for a show of hands in the audience of several hundred pharmacists as to how many had experienced an armed robbery in their pharmacies. You would be astounded by the number of hands that were raised in that audience. It was a shock to me. These crimes are the rule rather than the exception, and they simply must cease.

I am going to submit for the record a section-by-section analysis of my bill. Thank you, Mr. Chairman.

Senator **Mathias**. Thank you, Senator Grassley. Without objection, the analysis will be included as part of the record.

[Material referred to follows:]

SECTION-BY-SECTION ANALYSIS OF S. 1025 SUBMITTED BY CHARLES E. GRASSLEY

S. 1025

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pharmacy Protection and Violent Offender Control Act of 1981".

FINDINGS

Sec. 2. The Congress finds and declares that—

(1) robbers and other vicious criminals seeking to obtain contolled substances have targeted pharmacies with increasing frequency;

(2) the dramatic escalation of the diversion of controlled substances for illegal purposes by persons who rob and terrorize federally registered pharmacies is directly related to successful efforts by the Department of Justice to prevent other forms of diversion of such substances;

(3) Congress did not intend that terrorization and victimization of pharmacists and their families, employees, and customers should result from the aggressive enforcement of Federal drug laws;

(4) in order to address a discrepancy in Federal law, it is necessary to make robbery of a pharmacy to obtain controlled substances a Federal offense, as is the case when such substances are obtained by fraud, forgery, or illegal dispensing or prescribing; and

(5) any truly comprehensive strategy designed to curb pharmacy crime must, in cases of robbery, make available the investigative and prosecutorial resources of the Federal Government which are made available when controlled substances are obtained by other unlawful means.

PURPOSE

Sec. 3. It is the purpose of this Act—

(1) to assist State and local law enforcement officials to more effectively repress pharmacy related crime;

(2) to enhance the expeditious prosecution and conviction of persons guilty of pharmacy crimes;

(3) to assure that convicted offenders, especially repeat offenders, receive appropriate mandatory penalties; and

(4) to provide additional protection for pharmacies and pharmacists against the increasing level of violence which accompanies unlawful efforts to obtain controlled substances.

PROHIBITED ACTS

Sec. 4. (a)(1) Part D of the Controlled Substances Act is amended by adding at the end thereof the following new section:

"ROBBERY OF A CONTROLLED SUBSTANCE FROM A PHARMACIST

"Sec. 413. (a) Whoever, by force and violence or by any intimidation, takes, or attempts to take, from the person or presence of another, any material, compound, mixture, or prescription containing any quantity of a controlled substance and belonging to, or in the care, custody, control, management, or possession of any pharmacist shall be fined not more than $5,000 or imprisoned not less than five years, or both. Whoever violates this subsection after one or more convictions under this subsection or subsection (b) or (c), or one or more convictions under section 406 relating to an offense under this section, shall be fined not more than $10,000 or imprisoned not less than ten years, or both.

"(b) Whoever, in committing, or in attempting to commit, any offense defined in subsection (a) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than $10,000 or imprisoned for not less than ten years nor more than life, or both. Whoever violates this subsection after one or more convictions under this subsection or subsection (a) or (c), or one or more convictions under section 406 relating to an offense under this section, shall be fined not more than $20,000 or imprisoned for not less than twenty years.

"(c) Whoever, in committing or in attempting to commit, any offense defined in subsection (a) of this section, kills or maims any person, shall be imprisoned for not less than twenty years. Whoever violates this subsection after one or more convictions under this subsection or subsection (a) or (b), or one or more convictions under section 406 relating to an offense under this section, shall be imprisoned for not less than forty years.

"(d) Notwithstanding any other provision of law, the imposition or execution of any sentence under this section shall not be suspended and probation shall not be granted.

"(e) As used in this section, the term 'pharmacist' means any person registered in accordance with this Act for the purpose of engaging in commercial activities involving the dispensing of any controlled substance to an ultimate user pursuant to the lawful order of a practitioner."

(2) The table of contents for the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 412 the following new item:

"Sec. 413. Robbery of a controlled substance from a pharmacist."

(b) Section 406 of such Act is amended—

(1) by striking out "Any" and inserting in lieu thereof "Except as provided in subsection (b), any"; and

(2) by adding at the end thereof the following new subsection:

"(b) Whoever violates this subsection relating to an offense under subsection (a), (b), or (c) of section 413 after one or more convictions under such section or under this section relating to an offense under such section, is punishable by imprisonment or fine or both which may not exceed the maximum punishment for such offense prescribed in the last sentence of subsection (a) of section 413, the last sentence of subsection (b) of section 413, or the last sentence of subsection (c) of section 413, as the case may be.".

COLLECTION OF DATA

Sec. 5. In order to provide accurate and current information on the nature and extent of pharmacy crime, the Department of Justice shall collect relevant data and include pertinent results in its annual Uniform Crime Report.

SECTION-BY-SECTION ANALYSIS

Section 2.—Findings: States the findings of Congress regarding pharmacy crime and finds that pharmacies are increasingly the target of criminals seeking Federally controlled drugs; finds that the increase in pharmacy crimes is directly related to Federal law enforcement activity; finds that such victimization of the pharmacy community was not intended by Congress; finds that the recognition of such robberies—without conditions relating to value, amounts involved or the presence of violence—corrects an obvious discrepancy in Federal law; finds that any rational attack on the problem must involve the investigative and prosecutorial resources of the Federal Government; and that a close cooperative working relationship with pharmacy practitioners is essential to the success of any pharmacy crime campaign.

Section 3.—Purpose: Establishes the purpose of the Act to assist state and local law enforcement officials to more effectively repress pharmacy crime; to enhance the speedy prosecution and conviction of those guilty of pharmacy crimes; to assure that all such offenders, but especially repeat offenders, are actually imprisoned; to protect pharmacists and their pharmacies against violence directed at obtaining federally controlled drugs; and to assure the widest possible involvement of the pharmacy community in the national effort to curb pharmacy crime.

Section 4.—Prohibited Acts: Establishes Federal penalties for the robbery or attempted robbery of federally controlled drugs from a pharmacy. It provides for a minimum penalty of five years imprisonment; ten years if armed or assault is involved; and twenty years if anyone is maimed or killed.

Section 413. (a).—Provides for substantial additional penalties for each subsequent conviction and requires that all extra penalties for such repeat violations be served consecutively and concurrently.

Section 413(b).—Provides for substantial additional penalties where armed or assault is involved.

Section 413(c).—Provides for substanial additional penalties if anyone is maimed or killed.

Section 413(d).—Prohibits suspension of sentence or probation for all stated offenses.

Section 5.—To assure that the nature and extent of pharmacy crime is both current and accurate this section requires that the Department collect appropriate information and that it be published in the annual Uniform Crime Report.

Senator **MATHIAS**. I would normally call on Senator Jepsen. Representative Hyde has said that he has some time pressures.

Senator **JEPSEN**. I would be pleased to yield.

Senator **MATHIAS**. Representative Hyde, if you will come to the table. It is a great pleasure to have you. I thank Senator Jepsen for deferring. You had announced in advance that you are under time pressure this morning.

STATEMENT OF HON. HENRY J. HYDE, A U.S. REPRESENTATIVE FROM THE STATE OF ILLINOIS

Mr. **HYDE**. Thank you, Mr. Chairman, and particularly Senator Jepsen and my good friend Senator Grassley and Judge Heflin.

I sincerely appreciate the opportunity to appear before this subcommittee and discuss briefly the alarming increase in armed robberies of pharmacies in the past few years. A Federal response to this problem is long overdue, and I want to urge this subcommittee and the rest of my colleagues in the Congress to take prompt action.

Before proceeding, I do want to commend those Senators who have either sponsored or cosponsored pharmacy crime legislation pending before this committee, particularly Senators Jepsen, Grassley, Heflin, and Sasser. The distinguished chairman of the Judiciary Committee, Senator Thurmond, also deserves high praise for his sponsorship of S. 2572, the comprehensive crime bill which includes a pharmacy robbery section.

Several years ago, it came to my attention that pharmacy robberies were increasing at an alarming rate because of criminals and addicts who were determined to steal narcotics and other controlled substances. To my astonishment, I learned that, while it is a Federal crime for a pharmacist to prescribe controlled substances illegally, that same pharmacist does not have the protection of the Federal Government if he is robbed at gunpoint of those same controlled substances.

I might add that Mr. Wood, who I think you will hear from shortly, the vice president of the National Retail Druggists Association, succinctly capsulized the reason for this legislation. He said there is nothing more important than staying alive.

This prompted me to introduce legislation in the 96th Congress. Regrettably, that increase has continued unabated. In 1981, there were 1,978 armed robberies of drugstores, an increase of 121.7 percent over 1976. The Justice Department estimates that one out of every five armed robberies that are committed against drugstores results in either death or injury.

As the Drug Enforcement Administration becomes more effective in controlling the traffic in illicit drugs, the more criminals and junkies turn to readily available sources such as the local pharmacist. Street crime is moving off the streets and into the drugstores, and our pharmacies are becoming open battlegrounds for junkies. Your local community pharmacist is totally at the mercy of these criminals who either need a quick fix or have a shopping list of drugs for sale on the street.

There is a compelling incentive for this type of criminal activity. Drugs such as amphetamines and barbiturates can command as much as $25 or $30 on the street for one pill. A couple of 100-tablet bottles can mean as much as $5,000 to a drug-dealing criminal.

It is time we took action to make our Nation's drugstores and pharmacies a safer place for pharmacists and their customers. We cannot allow our Nation's drugstores and pharmacies to become more of a battleground than they already are. At the beginning of the last session, I introduced H.R. 2034, an improved version of my earlier proposed legislation. I am delighted to report that it currently enjoys the cosponsorship of 176 of my colleagues who share my concerns about our beleaguered pharmacists and their customers.

Specifically, H.R. 2034 penalizes the taking of controlled substances which are under the control of or on the premises of any pharmacy, by force or intimidation. The penalties for a first offense range from a minimum of 5 years' imprisonment to a maximum 20 years' imprisonment and/or a $5,000 fine. In the case of a second or subsequent conviction, the penalties range from a minimum prison sentence of 10 years to a maximum term of 25 years and/or a $10,000 fine. Because these crimes pose a serious threat to life and limb, there are increased penalties, including a minimum sentence of 15 years' imprisonment, for assaults or use of a dangerous weapon in connection with the offense.

I might add parenthetically that these penalties are analogous to the penalties for the bank robbery offenses.

If the offender kills anyone, he is subject to imprisonment for life, but not less than 20 years.

While the adoption of pharmacy crime legislation will not bring an end to this sordid activity, I am convinced that inclusion of such crimes in our Federal criminal statutes will serve as a strong and effective deterrent to such attacks. I share the concern of many, including the DEA about limited Federal resources in addressing this problem. To that end, the DEA has suggested that Federal legislation should be limited to violent or armed robberies. Its representatives have also urged that legislation cover all registrants under the Controlled Substances Act and include mandatory minimum penalties. Reflecting these preferences, H.R. 2034 covers only violent or armed robberies and includes mandatory minimum penalties. I have recently introduced a new version of my bill, H.R. 6364, which extends the protections of H.R. 2034 to all registrants.

Since the introduction of H.R. 2034, I have made repeated requests of the Justice Department for a formal expression of their position on this urgent matter. I have received several promises of expedited internal review of proposed language by the Department of Justice and the Office of Management and Budget, and I continue to eagerly await their proposal. As I understand it——

Senator **Mathias**. Let the Chair interrupt you at this point to express a sympathetic word. I thought over in the other body you got better treatment.

Mr. **Hyde**. No, unfortunately, the fact that there are more of us does not cut any ice with these people. I continue to eagerly await their proposal. As I understand it, a position may be sent to this subcommittee within the next week. I will once again press for hearings in the House Subcommittee on Crime at that point.

In conclusion, I sincerely want to commend to this subcommittee's attention to this subject and also the outstanding efforts of the industry organizations and associations who have been particularly active in highlighting the growing problem of pharmacy crime. The issue was initially brought to my attention by the National Association of Chain Drug Stores and one of their member companies, Walgreen Co. of Illinois. The NACDS has been extremely effective in marshaling support for legislation, as has the National Association of Retail Druggists. Although there are a number of other associations which have been deeply involved in this issue, one individual in particular has been in the forefront: Stanley Siegelman, editor in chief of American Druggist magazine. In virtually every issue of his publication he has promoted the adoption by Congress of pharmacy crime legislation. Mr. Siegelman has gathered petitions by pharmacists and customers alike, calling upon Congress to take action. As Mr. Siegelman points out:

> The Federal Government gives pharmacists the unique responsibility of safeguarding drugs. Therefore, the Federal Government should protect pharmacists while they are carrying out that function.

Let me just add this. I hope that this subcommittee does not get the idea that as long as it is in the Thurmond comprehensive crime legislation that was introduced recently—and I am very glad that it is—that that will take care of the problem. Over on the House side, that bill has been sent to four different subcommittees for hearings. It will have a difficult time getting through the committee morass that is indigenous to our body. So, I hope that you will give the particular legislation particular attention.

Senator **Mathias**. Now, that's a case where we are different from you. We don't have any morass on this side.

Mr. **Hyde**. You are to be commended and envied.

I thank you very much.

Senator **Mathias**. Thank you very much, Representative Hyde. Do you have any questions, Senator Grassley?

Senator **Grassley**. No, I have none.

Senator **Mathias**. Senator Heflin?

Senator **Heflin**. No questions.

Senator **Mathias**. Thank you very much for being here. I am sorry that we delayed you a little bit beyond the time that we promised. I hope we have not disturbed your day too much.

Mr. **Hyde**. Not a bit. Thank you very much.

STATEMENT OF HON. ROGER W. JEPSEN, A U.S. SENATOR FROM THE STATE OF IOWA

Senator **Jepsen**. Mr. Chairman, I commend and thank you for holding this hearing. Those of us who have been working on the pharmacy crime issue for the past several years welcome this opportunity to testify.

I would ask, Mr. Chairman, respectfully that I might summarize my comments but that my testimony be inserted in the record as if read in whole.

Senator **Mathias**. Without objection, it is so ordered.

Senator **Jepsen**. I do not need to belabor the problem. You have had statistics, and you have had testimony. You have in Senator Grassley and others in your committee such as Senator Heflin people who are deeply concerned and have done a great deal of research on this problem. We know the history of the Criminal Code reform bill which includes the pharmacy robbery problem.

I am pleased that, after several rounds of the Criminal Code bill which for one reason or another has never come before the Senate for consideration, today the new anticrime bill that has recently been introduced in the Senate now also includes the violent crime and drug enforcement improvement act and includes pharmacy crime language. I point out very importantly that not only has the pattern of the practice language been removed which was of concern before but the $500 trigger amount has also been deleted.

As Senator Thurmond noted in his statement in the Congressional Record of May 27, the language in S. 2572 is very similar to the language that I have been recommending for the past few years. I am confident that the Senate will act on the Thurmond anticrime bill before the end of this session. Mr. Chairman, I urge you to seriously consider and make preliminary arrangements to report out a freestanding pharmacy crime bill in the event circumstances relating to the pharmacy crime issue prevent consideration of Senate file 2572. In the event the subcommittee believes that changes are in order, I hope they will do this and report out legislation because of the urgency of this matter.

I would suggest that the pharmacy crime legislation not include any provisions that would limit Federal jurisdiction. By this, I mean provisions similar to those placed on the other pharmacy crime bills currently pending before this committee: Senate files 20, 954, and 1339.

I am pleased to see Senator Grassley's bill does not include this. If you want to use a bill as a proposal from your committee, his would be ideal.

If, as I suspect, the Senate adopts strong pharmacy crime language, we will be sending an unqualified message to the thousands of pharmacists throughout the country that we recognize the danger they face.

Although the widespread support for the pharmacy crime legislation has never been doubted, it has only been recently that we have had a symbol of this support. I have here, Mr. Chairman, petitions. I will not ask that all of these petitions be placed in the record, but I would like my colleagues to know that the record will show that I have received over 160,000.

Senator **Mathias**. I am wondering, Senator Jepsen, if you could bring those up to the desk so that during the hearing we could be examining them.

Senator **Jepsen**. Fine. It is over 160,000 petition signatures.

I ask that this one particular petition be placed in the record of this hearing at the end of my statement and that it be noted that this one petition represents the thousands that I have received.

Before I conclude, Mr. Chairman, I would be remiss if I did not acknowledge the herculean effort put forth by pharmacists from all over America in bringing this issue to the attention of their customers. One man's efforts in particular stand out in my mind. He is here in these chambers today. Stanley Siegelman is editor of American Druggist magazine and one of the witnesses scheduled to testify this morning. He has led a relentless fight to keep the American people informed about the seriousness of this problem. Through his editorial columns, new reports and exposes, Mr. Siegelman has performed a great service not only to the pharmacists of this country but also to the people who depend on these highly trained individuals to dispense lifesaving medicines. If it were not for Mr. Siegelman's work, most Members of Congress would never have known of the widespread concern over this issue.

I would also like to acknowledge the invaluable support of the National Association of Retail Druggists. Through its national legislative committee, it has made every effort to see that Members of Congress are fully aware of the extreme importance of this vital legislation.

Finally, Mr. Chairman, I want to thank the Iowa Pharmacists Association for their efforts. Through their work, I have gained a greater understanding of the dangers Iowa pharmacists must face every day and pharmacists throughout the Nation must face every day in their attempts to serve the public.

Mr. Chairman, pharmacists will still be putting their lives on the line to serve the public, but they will at least have a fighting chance if the Congress adopts pharmacy crime legislation. If even one drug addict is persuaded against robbing the local pharmacy to obtain his drugs, then this legislation will have been worth the effort.

In closing, I would like to submit for the record a poem sent to me by a pharmacist from Blue Ridge, Ga. The poem was written the night after she had been robbed at gunpoint for the 10th time in 4 years. Because the poem is quite long, I will only read three verses, but I ask that the entire poem appear in the record of this hearing as if read. The three verses are:

> Act now, today in Congress, Give us our protection; Should we close our stores,—bar our doors, Or just wait for your re-election?
>
> Listen now to us, Give us our right, To keep them from stalking, by day and by night;
>
> Grant us the peace, To attend to your health, Free us the bondage, The addict has dealt.

That is from Gwen Holden Skelton, a registered pharmacist in Georgia.

Anything else I might say, Mr. Chairman, would pale against the glowing words of Mrs. Skelton. Give pharmacists the peace to attend to our health. Let us free them from the bondage that the addicts have dealt. Thank you, Mr. Chairman.

Senator **Mathias**. Thank you very much, Senator Jepsen.

Without objection, the poem and the petition will be inserted into the record along with your statement.

Senator **Mathias**. Are there any questions?

Senator **Grassley**. I have none, Mr. Chairman.

Senator **Heflin**. The only thing I can say is that, with all of these petitions and everything else, it is pathetic we do not have some television coverage.

Senator **Jepsen**. We will see that the story is told that needs to be told. I commend the committee for everything they are doing.

I again stress that we should watch this Criminal Code bill very carefully. If we honestly believe that there is a chance it will be delayed, detained or maybe put on the shelf this session, I would hope that this committee would be very quick and bring out a freestanding bill on this. We cannot wait any longer. Thank you, Mr. Chairman.

Senator **Mathias**. Thank you very much, Senator Jepsen.

[The prepared statement and additional submissions of Senator Jepsen follow:]

Prepared Statement of Senator Roger W. Jepsen

Let me begin, Mr. Chairman, by thanking you for holding this hearing. Those of us who have been working on the pharmacy crime issue for the past several years welcome this opportunity to testify.

Until a few years ago, I, like many Americans, was unaware of the serious pharmacy robbery problem that has existed in this country since the early 1970s. Fortunately, shortly after being elected to the Senate, I was approached by my family pharmacist in Davenport, Iowa, about this situation. To say the least, I was shocked and disturbed by the stories he told.

It was not long after this meeting that the judiciary committee completed action on the omnibus criminal code reform bill. Including in that legislation was a provision to make the robbery of a controlled substance from a pharmacy a Federal offense, but only if the amount stolen exceeded 500 dollars, or the robbery was part of a pattern of practice in the locality.

While I was pleased to see the committee address this serious problem, I felt that by including the $500 "trigger" amount, the committee had negated any deterrent effect the legislation might have had. For this reason. Mr. Chairman, I proposed an amendment striking the dollar and pattern of practice provisions.

As we all know, because of the controversial nature of the Criminal Code reform bill, it never came before the Senate for consideration.

During the 97th Congress, the Senate was presented with a new Criminal Code reform bill, again including the pharmacy crime language and again including the $500 "trigger" amount. The "pattern of practice" language was, however, deleted. Still believing that the language needed refinement, I offered an amendment to strike the $500 figure. Once again, because of the controversial nature of the Criminal Code reform issue, this measure has been returned to the calendar and further action is extremely doubtful.

Despite these discouraging developments, there is cause for some joy in that a new anti-crime bill has recently been introduced in the Senate. As before, this bill, the Violent Crime and Drug Enforcement Improvement Act of 1982, includes pharmacy crime language. More importantly, not only has the pattern of practice language been removed, but the $500 "trigger" amount has been deleted also.

As Senator Thurmond noted in his statement in the Congressional Record of May 27, the language in S. 2572 is very similar to the language I have been recommending for the past few years. I am confident that the Senate will act on the Thurmond anti-crime bill before the end of this session.

In the event that circumstances unrelated to the pharmacy crime issue prevent consideration of S. 2572, the Criminal Law Subcommittee should be prepared to report out a freestanding pharmacy crime bill. Clearly, I believe my proposal deserves the serious consideration of this subcommittee.

In the event the subcommittee believes changes are in order, I would suggest that the pharmacy crime legislation not include any provisions which would limit Federal jurisdiction. By this, I mean provisions similar to those placed on the other pharmacy crime bills, currently pending before this subcommittee: S. 20, S. 954, and S. 1339.

If, as I suspect, the Senate adopts strong pharmacy crime language, we will be sending an unqualified message to the thousands of pharmacists throughout the country that we recognize the danger they face and we are trying to do something to stop it. In addition, Mr. Chairman, we will be sending a very clear message to drug addicts, robbers, and other hardened criminals, that the Federal Government will no longer stand idly by while these murderers run roughshod over the pharmacy industry.

Although the widespread support for this pharmacy crime legislation has never been doubted, it has only been recently that we have had a symbol of this support. I will not ask that all of the petitions I have be placed in the record, but I would like my colleagues to know, and the record to show, that I have received over 160,000 petition signatures in support of pharmacy crime legislation. These petitions have been signed by concerned individuals from all across America. Mr. Chairman, I ask that one petition be placed in the record of this hearing at the end of my statement, and that it be noted that this one petition represents the thousands I have received.

Before I conclude, Mr. Chairman, I would be remiss if I did not acknowledge the herculean effort put forth by pharmacists from all over America in bringing this issue to the attention of their customers. One man's efforts, in particular, stand out in my mind. Stanley Siegelman, editor of *American Druggist* and one of the witnesses scheduled to testify this morning, has led a relentless fight to keep the American people informed about the seriousness of this problem. Through his editorial columns, news, reports, and exposes, Mr. Siegelman has performed a great service, not only to the pharmacists of this country, but also to the people who depend on these highly trained individuals to dispense life saving medicines. If it were not for Mr. Siegelman's work, most Members of Congress would never have known of the widespread concern over this issue.

I would also like to acknowledge the invaluable support of the National Association of Retail Druggists. Through its national legislative committee, it has made every effort to see that Members of Congress are fully aware of the extreme importance of this vital legislation.

Finally, Mr. Chairman, I want to thank the Iowa Pharmacists Association for their efforts. Through their work, I have gained a greater understanding of the dangers Iowa pharmacists must face every day in their attempts to serve the public.

Mr. Chairman, pharmacists will still be putting their lives on the line to serve the public, but they will at least have a fighting chance if the Congress adopts pharmacy crime legislation. If even one drug addict is persuaded against robbing the local pharmacy to obtain his drugs, then this legislation will have been worth the effort.

In closing, Mr. Chairman, I would like to read a poem sent to me by a pharmacist from Blue Ridge, Ga. The poem as written the night after she had been robbed at gun point for the tenth time in four years.

SHIELD US

Shield us, Oh men of Congress,
  Enshroud us with your laws,
Protect us from this brazen crime,
  Plead for us our cause.

Each day we face the threat of gun,
  The addict wields the power,
To make us do his bidding,
  Or meet the threat of fire.

Licensed as a Pharmacist,
  We knew not, on that day,
That we would be the target,
  Of addicts—be their prey.

They know we're unprotected,
  As Hunters—we're their "game".
They serve some time, then on parole,
  Get out—repeat the same.

They feel no fear of legal bite,
  Withdrawal spurs them on,
One thought in mind—to seek a "fix",
  Leaves many a vacant home.

A Druggist goes to work one day,
  Never to return,
To family, friends, and neighbors,
  Congress did not learn.

An addict sought him out that day,
  Wild-eyed and crazed for drugs,
He knew we had no Federal shield,
  From robbers, thieves, or thugs.

The addict entered, knowing well,
  No prison he would fear,
No law was passed—no example made,
  No one seemed to hear.

Hypothesis, you just might say,
  But multiply by a hundred,
The daily ravage the addicts take,
  As they go unencumbered.

As their guns are fired,
  And their entries taken,
They force their presence,
  Our lives are shaken!

Many a law and Federal statute,
  Were made for US to follow,
Regarding the health and safety,
  Of only the "other fellow".

Act now, today in Congress,
  Give us our protection,
Should we close our stores—bar our doors,
  Or just wait for your reelection?

Then "they" can feel the adrenalized fear,
  For the rest of their lives,
For attempting to try it,
  Just once—Not twice!

Only then will they know,
  There is no place to hide,
No loopholes—No mercy—Maximum time,
  No laws—no courts—Now on their side.

This shield you can give us,
  If only you care,
To lift our restrictions,
  Or wouldn't you dare,
To give us control,
  Of the drugs that we guard?
Or services rendered,
  Give us some regard.

To prepare our own plan,
  To control the known addict,
Write it in law,
  As your own Federal edict.

Great laws could evolve,
  From our desperate plight,
To revolve for ourselves,
  The plan that we write.

Listen now to us,
  Give us our right,
To keep them from stalking,
  By day and by night!

There is much evidence,
  This crime would go down,
Please give some credence,
  To the Druggist in town.

Grant us the peace,
  To attend to your health,
Free us the bondage,
  The addict has dealt!
    —Gwen Holden Skelton, *Registered Pharmacist.*

Detach page here and mail to Editor in Chief, American Druggist, 224 W. 57th St. New York, N.Y. 10019

A PETITION TO CONGRESS

Recognizing that drug-seeking criminals are increasingly committing violence against pharmacists, the undersigned respectfully urge that a law be enacted that would make such acts Federal offenses.

The Federal government gives pharmacists the unique responsibility of safeguarding drugs. Therefore, the Federal government should protect pharmacists while they are carrying out that function.

Name	Complete address, including Zip
J. Chan[illegible]	PO Box 524 Feasterville Pa 19047
D. Holt	52 N. Hilltop Dr. Churchville PA 18966
C. [illegible]	711 [illegible] Langhorne Pa 19047
[illegible]	109 Elm Ave Churchville Pa 18966
C.A. Callong	9 [illegible] Dr. Holland, Pa. 18966
Alma Pade	45 Lark Dr Holland Pa
[illegible] Gerstadt	22 Cameron Dr Holland Pa.
H. Perlstein	79 Tulip Rd. Holland, Pa.
B.A. Ford	304 Parkview Ave Abington Pa
Joseph G. Pennibitt RMD	17 Seton Hill Ct. Holland Pa
[illegible] B. Johnson	119 Woodlawn Ave [illegible] Pa
Mike Spadaccini	58 E. Robin Rd Holland, Pa. 18966
[illegible]	21 Pine Run Place Holland Pa
Kathleen M. Brown	1385 Mill Creek Rd Southampton PA
Robert D. Jacoby	272 WINDSOR DR CHURCHVILLE PA 18966
J. Whelan	1022 Holland Rd. Holland Pa 18966
Mrs. E. K. [illegible], Jr.	[illegible] Rd. Holland, Pa. 18966
[illegible]	[illegible] Holland Pa. 18966
Richard C. Uphoff	636 Beverly Rd. Holland Pa 18966
John J. Dixon III	101 Bluebird Rd. Holland PA 18966
Ralph C Rollings Jr	44 N WESTVIEW FEASTERVILLE PA 19047
Eugenie Rollings	44 N Westview Ave Feasterville Pa 19047
P. Yochim	104 Signal Hill Rd. Holland Pa 18966
Mrs. Patricia Mullineaux	8820 Rambler Dr. Holland, Pa 18966
[illegible]	[illegible]

(continued on reverse)

PETITION TO CONGRESS *(Continued)*

Name	Complete Address, including Zip
M. Resmeister,	288 Fairhill Dr. Churchville, Pa 18966
[illegible]	237 Rocksville Road [illegible] Holland Pa 1874
Mrs. Margaret [illegible]	56 E. Heron Rd. Holland, 18966
Susan [illegible]	9 Buckskin Pl Holland Pa
Nancy H Edden	156 Rocksville Rd. Holland Pa 18966
Dorothy [illegible]	123 No 2nd St Pike Southampton 18966
Patricia Di [illegible]	Windy Bush Rd [illegible]
D. J. Riley	32 Christopher Dr. Holland Pa. 18966
Kim E Myers	35 Vanderveer Ave. Holland Pa 1896
Mary Lou Majewski	56 Woodlake Dr. Holland Pa 18966
Margaret Urban	47 Carriage Doylestown Pa 18901
Penny [illegible]	140 Crescent Dr, Holland, Pa 18966
Holly R. Shay	51 Martin Dr, Holland, Pa. 18966
Evangeline [illegible]	231 S. Olds Blvd. Fairless Hills 19030
[illegible] Paul	[illegible] Creek
Mary Jane Casselberry	621 Bustleton Pike Richboro, Pa 18954
Marie T Szczesniak	563 Sugartown Rd. Holland Pa 18966
Kathleen D. Uhl	60 Heron Rd Holland PA 18966
Margaret Cheney	25 Bluebird Road, Holland 18966
Delores Lu[illegible]	377 Ronald Dr. Holland, Pa.
Carol [illegible]	104 Chestnut St. Newtown Pa 18940
Kathy M. Duffey	71 North Dr. Holland Pa 18966
Helene J Schulman	63 Pine Run Dr. Holland Pa 18966
Nancy J. Mullin	45 Pine Run Dr. Holland Pa. 18966
Elizabeth A. Kilroy	174 Lark Dr Holland Pa 18966
Susan Holt	52 W. Hilltop Dr Churchville Pa

I CERTIFY THAT THE SIGNATURES ON THIS PAGE ARE BONA FIDE, AND WERE COLLECTED IN THE PHARMACY WHERE I PRACTICE.

(Signature of pharmacist)

PLEASE PASTE STORE LABEL HERE:

Senator **Mathias**. Our next witnesses will be a panel consisting of William E. Woods, executive vice president, and Mr. Darwyn Williams, a member of the executive committee of the National Association of Retail Druggists.

I can tell you that at the moment we can ignore all the buzzing, but at some point it may get serious. The committee will then have to go to the Senate floor. I am not rushing you, and I know that Senator Grassley and Senator Heflin are not rushing you, but time may rush us.

Senator **Grassley**. Mr. Chairman, may I speak about my good friend, Dar Williams, from Webster City, Iowa, who is not only a friend of mine but also a person whom I know from the days I was in the legislature because of his activity and leadership in this association. I want to compliment him for his leadership and commend his expertise to the committee as we work for the passage of this legislation.

Senator **Mathias**. Thank you, Senator.

Without objection, we will insert into the record a prepared statement of Senator Sasser.

[The prepared statement of Senator Sasser follows:]

PREPARED STATEMENT OF SENATOR JIM SASSER

Mr. Chairman, I would like to thank the subcommittee for extending me this opportunity to testify on legislation I introduced early in the 97th Congress to curb the rising tide of pharmacy crime. Now more than ever it is imperative that we take the steps necessary to increase federal involvement in solving pharmacy crimes.

These hearings today will focus attention on the need to take effective action to eliminate the drug problem that plagues our economy, our schools, and our communities. I am pleased to note that the committee has recognized the proportions to which pharmacy crime has grown.

Every day, when a pharmacist goes to work, he takes his life in his hands. In 1980, I held hearings in the Senate Small Business Committee at which the problem of pharmacy crime was discussed. I heard from pharmacists who live in fear. They have been victims and their friends have been victims. Some of them have been forced to set aside "goodybags", in an attempt to keep the criminal happy and prevent a shooting. They have seen too much violence and intimidation—and the time is now to remedy the situation.

What should the Federal Government do to help stop pharmacy crime?

Presently the Federal Government controls who may prescribe drugs and under what circumstances those drugs may be prescribed. The Federal Government sets the penalties for illegal drug use and possession. And the Federal Government decides what drugs are enrolled in schedules I through IV of the Controlled Substances Act. But the Federal Government has no jurisdiction to assist the pharmacist when he is robbed of drugs listed in schedules I through IV. As a result, the criminal element turns to retail drug stores as the other sources of drugs are eliminated by the drug enforcement administration and the department of justice.

My bill now under consideration by the subcommittee would make the theft of any substance listed in schedules I through IV of the Controlled Substances Act from a retail pharmacy a Federal crime subject to a prison term of 10 years and a $5,000 fine. Federal jurisdiction would be established when the stolen goods are valued in excess of $500 or the robbery is part of an established pattern of pharmaceutical robberies.

I remind the subcommittee that similar legislation received the unanimous approval of the 95th Congress, only to die in the House. During the 96th Congress, the Senate Judiciary Committee adopted similar provisions in the Criminal Code reform legislation reported to the Senate. Nearly identical provisions form part of drug control legislation already introduced during the 97th Congress. Implementation of this worthy proposal has unfortunately been blocked by the controversy surrounding the larger issue of Criminal Code reform.

So the time is now, Mr. Chairman, to act upon this legislation and prevent more pharmacies from becoming the prime targets for robbers. Pharmacists are the need-less victims of our war against drug abuse—and it is time we extended the resources of the Federal law enforcement bureaus to cover pharmacy crime.

I recognize that approval of the pharmacy crime legislation is not the entire answer. We have to take other steps to tighten up the criminal justice system and make it more efficient and effective in taking the criminal off the streets. For instance, we need to correct a loophole in the Federal Tax Code which presently allows drug traffickers to deduct from their income tax all expenses incurred in illegal drug transactions. The provision treats drug traffickers like honest businessmen—but the Federal law provides no similar protection for the real businessmen, the retail pharmacists.

More often than not, drug traffickers are free on bail within minutes of arrest. We need to reform the bail bond program, requiring bail to be set at no less than the street value of the drugs seized in the arrest. In many cases, bail is just the cost of doing business. One case I am familiar with has a man indicted for a $9 million downpayment in a cocaine deal worth $200 million making the $1 million bail. He walked out of court and hasn't been heard from since. I have introduced the drug trafficking prevention action, S. 2615, as part of my effort against the increasing availability of illicit drugs.

It is imperative that we enact a comprehensive strategy for taking the profitability out of drug trafficking and provide an improved legislative framework for combatting drug-related crime. The illicit drug trade is now estimated to be worth approximately $64 billion a year. That figure would make it the second largest corporation in America, behind Exxon and slightly ahead of Mobil.

And look at the result. The by-product of this illegal industry is more violence, more crime, and an increasingly overworked criminal justice system.

In my own State of Tennessee, there were 20,284 violent crimes in 1980. These included 10,417 assaults, 8,208 robberies, and 489 murders. These are the types of crime that most affect the public. These are the crimes most commonly related to drug trafficking.

I urge the subcommittee to take the first steps in improving the Federal response to the drug trade and approve the pharmacy crime legislation now before you. From there, we can begin to make the decisions necessary to address the larger problem or organized crime involvement in drugs, the prevalence of illegal both international and domestic, illegal drug trafficking, and the rising number of younger Americans who have turned to drug abuse and crime.

STATEMENT OF WILLIAM E. WOODS, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF RETAIL DRUGGISTS, ACCOMPANIED BY DARWYN J. WILLIAMS, NARD EXECUTIVE COMMITTEE; JOSEPH A. MOSSO, NARD THIRD VICE PRESIDENT; AND JOHN M. RECTOR, DIRECTOR OF GOVERNMENT AFFAIRS

Mr. Woods. Mr. Chairman, I am William E. Woods of Easton, Md. I serve as chief executive officer of the National Association of Retail Druggists [NARD]. My colleagues this morning are Dar Williams, who has been introduced, a member of our executive committee; Joe Mosso from Latrobe, Pa.; and John Rector, director of our government affairs department.

The National Association of Retail Druggists represents owners of 30,000 independent pharmacies, where over 75,000 pharmacists dispense over 70 percent of the Nation's prescription drugs. They serve 18 million persons daily. NARD has long been acknowledged as the sole advocate for this vital component of the free enterprise system.

As owners of independent pharmacies, our members are committed to legislative and regulatory initiatives designed to provide them a safe and fair chance to operate. We especially appreciate the opportunity to appear before this important committee and present our views and recommendations on a variety of bills, each with a common purpose: to provide a Federal deterrent to the alarming expansion of violence spawned by vicious criminals seeking federally controlled dangerous drugs from these small businesses.

We would like to express our special appreciation to the subcommittee, its chairman, members of the committee and staff for the extraordinary cooperation that you have shown us in the planning of this legislative hearing. Additionally, we want to acknowledge the special commitment of Senators Grassley, Sasser, Jepsen, and Heflin in helping to fashion an appropriate Federal response to such robberies. Their collective efforts and the 50 cosponsors of the various bills demonstrate that this is not a partisan matter and, in fact, never has been.

You have renewed our hope that our objective may yet be achieved during the 97th Congress by an appropriate amendment to the Controlled Substances Act of 1970.

NARD and its members have a long history of almost 100 years of cooperation with government officials responsible for the proper control of drugs that have a potential for abuse. It is ironic, therefore, that the one major dispute we have and have had for more than a decade with the Federal Government's drug control strategy is the failure to acknowledge and address the singularly most violent mode of controlled substances diversion, robbery of CSA-registered retail pharmacies to obtain dangerous controlled drugs.

From day one in the development and consideration of the measures that became the CSA, NARD urged the Justice Department and Congress to provide sanctions against the robbery of pharmacies to obtain dangerous drugs. We cautioned that failure to acknowledge such violence targeting our members would only return to haunt.

It appeared that Congress was so focused on the substances of abuse it was blinded as to the predictable victims of violent efforts to obtain these substances.

If it was an awareness of victims and violence that would be necessary to get the attention of the Federal Government, as we had predicted, the passage of time would yield the body count.

NARD each year has urged the Congress to act. During Senate Judiciary 1974 oversight hearings on the Controlled Substances Act, for example, we testified: "NARD and its members are greatly concerned over the increased risk of crimes of violence in pharmacies."

The inconsistencies, however, have remained. It is a serious violation of Federal law if dangerous drugs are diverted from a pharmacy by fraud or by improper prescribing. Yet, when the same drugs are illegally obtained in daytime robberies by vicious assailants who terrorize customers, employees, and our members, no Federal robbery sanction is available. In fact, enforcement of the provisions of the 1970 Controlled Substances Act designed to reduce forms of diversion other than robbery has increased both the street value of the drugs sought and the likelihood of robbery as a more preferred method for obtaining these drugs.

Let there be no doubt about it. The record, the facts are sad but dramatic. The NARD chart tells it all.[1] The number of robberies have increased in 1973 from 737 to 1,908 in 1981. Since 1973, when NARD drafted the first corrective legislation, which was introduced in the Senate, robberies of retail pharmacies to obtain these substances have increased an incredible 160 percent. The trend continues unabated. From 1976 to 1981, when robbery nationally increased by one-third, the robbery of pharmacies to obtain these drugs increased by 113 percent. Pharmacy thefts increased by 19 percent. During the same period, robbery as a percent of total pharmacy theft increased by almost 100 percent, from 15 to 28 percent. In comparison, robbery, generally a fast-growing crime of violence, has increased nationally by 31 percent.

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[1] See chart on p. 31.

What of the victims, those terrorized, assaulted, maimed, and, yes, murdered? We have done our level best, as has the American Druggest, since 1980 to accurately document this carnage. Referring again to the NARD chart, what we do know is that since 1973, when the legislation to make such robberies a Federal offense was introduced in the Senate, 11,786 stores have been the victims of robberies to obtain these drugs. The Justice Department studies reveal that one in five robberies results in death or some injury to victims. Thus, during this period, using the Justice Department's figures and percentages, approximately 2,357 NARD members, pharmacists, employees, or customers have been injured or killed in the course of such robberies.

The Government, however, has artfully covered up the actual statistics. When our pharmacists are robbed, our members must file a form, DEA form 106, as to the particulars of the robbery. Item No. 11 on this form mandates that any injury be reported as well as a comment as to the nature of the harm. Our pharmacists must file this theft form or face felony penalties ranging up to 8 years in prison or $60,000 fine or both for not reporting to the Federal Government the particulars of the robbery which is not the subject of any Federal penalty.

As if to add insult to injury, these reports of woundings, brutal beatings, and murders committed in conjunction with pharmacy robberies are ignored by DEA. Mr. Chairman, NARD requests that the subcommittee explore what appears to be a coverup of data that would add pursuasively to the impressive support for action on the pharmacy robbery legislation.

Senator MATHIAS. Mr. Woods, I find myself in the very unhappy position of——

Mr. WOODS. May I introduce Mr. Williams at this point?

Senator MATHIAS. Surely. Let me say that anyone who has made the sacrifice that you have made today, who lives in Easton, Md., and would leave the Eastern Shore to come to this den of iniquity ought to be given more courtesy than I am able to give you. But, if I do not enforce the rule with you, then it is going to be difficult to enforce it with others, and we simply will not have time to finish.

Mr. WOODS. Mr. Chairman, I have just concluded. I appreciate very much this opportunity. That does wind up my part. I would like to introduce Dar Williams to make his comment.

Senator MATHIAS. Thank you very much. Without objection, we will insert your prepared testimony.

Mr. WILLIAMS. Mr. Chairman, despite the long haul since 1969, we are here today more optimistic than ever. The tragic and growing injury and body count in pharmacists and consumers in each of our communities has no doubt yielded the progress we can report today: First, a record number of pharmacy robbery bills introduced in the 97th Congress; second, a record number of cosponsors of pharmacy robbery bills includes 53 Senators and more than 200 Members of the House of Representatives; third, the scheduling of S. 2572 with its pharmacy robbery section, title IX, part J, on the Senate calendar. Also relevant is the recent announcement by Attorney General Smith that the FBI would break with precedent and become involved with drug diversion and traffic cases, especially those involving violence.

This, coupled with the unparalleled expertise of the FBI in robbery cases and the recent merger of the FBI and the DEA, provide additional reasons to believe that, unlike the past 10 sessions, the 97th Congress, second session, will have the opportunity in both Houses to vote to protect the public and the retail pharmacists from the havoc engendered by those who violently seek to obtain federally controlled drugs.

Mr. Chairman, your interest, as demonstrated in part by these hearings, is another reason for our optimism. We salute each Senator who has authored the bills in the subject of today's hearings and understandably express a strong preference for the features of NARD's pharmacy protection and violent offender act. These include: First, mandatory minimum penalties for robberies of pharmacies to obtain federally controlled substances; second, additional mandatory penalties for repeat offenders; third, mandatory penalties for those who conspire to commit such robberies; fourth, denial of probation and suspended sentence to those convicted of such robberies; and, fifth, a requirement that the FBI include pharmacy crime including robberies and its victims in its annual uniform crime report.

Thus, the present law reflects appropriate Federal interest when controlled substances are obtained through nonviolent theft such as forgery. As the label warning reminds us, even simple possession without a prescription is a serious Federal violation. Their deterrent impact is clear. Yet, there is no Federal sanction for robberies, usually armed, who violently abuse customers, employees, or the owners we represent.

We believe in the deterrent impact. We agree with the DEA when it asked that we request our members to post signs that it is a Federal offense to obtain controlled substances by forgery. It is a deterrent. But what should we tell our members when they are shot, maimed, yes, and murdered by robbers attempting to obtain controlled substances? Sorry, the Federal Government is not interested, only in forgeries and other diversions but not brutal force to obtain narcotics.

We do not suggest that ordinary crimes in pharmacies like robbery and burglary be blanketed into Federal jurisdiction. However, we do request that crimes of violence, assault, robbery, murder, and the like involving controlled substances be subject to the Federal jurisdiction. Thank you, Mr. Chairman.

Senator **Mathias**. Thank you.

Mr. **Woods**. Mr. Chairman, our next witness is Joe Mosso from Pennsylvania, who is——

Senator **Heflin**. Mr. Chairman, I am going to have to leave. I have a question that I would like to address if you do not mind. That question is basically whether there ought to be a threshold amount and, if so, what that amount ought to be.

Senator **Mathias**. Let me see if Mr. Woods can respond to that.

Mr. **Woods**. Mr. Chairman, this is really not an economic matter. You can get killed just as dead over 10 cents' worth of drugs as you can over $1,000. Really, there is not a large cost involved. Of course, something can cost $1 that could be selling for $2,000 out on the street. So, I would strongly urge not to put a dollar limit in it. If you put $200, then it could eliminate a lot of people from being convicted when the dollar value is of no importance at all to our members. It is not what we are pleading. It's not that we are losing dollars. It is lives of our customers and our pharmacists and injuries to them.

Senator **Heflin**. In other words, the words controlled substance, in effect, is a threshold as opposed to aspirin or Tylenol or anything else where they might come in and attempt to get.

Mr. **Woods**. I will tell you this. If they ever put aspirin or Tylenol on the controlled substances list, they will be in there shooting our people because there is some market for it out on the street.

Senator **Heflin**. Do any of the rest of you have any ideas that you want to express on that?

I reckon the reason has been that they thought maybe the nuisance type case ought to be handled locally or by the State rather than the FBI. But I can see, as you point, you have got a problem. The person who comes in there may be completely high on drugs himself and may pick up only $25 or $5 or something else; it causes the same amount of problem.

Mr. **Woods**. They are dangerous people. Some are crazed to the extent that they do not seem, to know what they are doing when they commit such robberies.

Senator **Heflin**. Thank you. I apologize but I have got to go.

Mr. **Woods**. Mr. Chairman, shall I introduce Mr. Mosso or did you have a question?

Senator **Mathias**. My problem is that we had budgeted. Budgeting is our key factor these days. We had budgeted for you and Mr. Williams. We have four more scheduled witnesses. It is very difficult for the budget to accommodate any unscheduled witnesses. If he could make a 1-minute statement, then we could include the balance of his statement in the record.

Mr. **Woods**. His is very short.

Mr. **Mosso**. Thank you, Mr. Chairman.

Our members are health care professionals, not policemen. Nor are they experts in the art of self-defense. Through no fault of their own, pharmacists have been placed in a situation where their lives and property are continually at risk. NARD believes that pharmacists ought to be supported, as they make sacrifices which necessarily accompany this national push to reduce drug diversion and abuse.

Failure to act has had many consequences. The scandalous increase in actual robberies illustrated by the aforementioned chart tells only part of the story. The street value of the drugs stolen by these robbers is estimated in the hundreds of millions of dollars. Yet, monetary value is only one element of the havoc caused by pharmacy robbery. As mentioned, merchandise can be replaced, but what value do we ring up for human carnage and terror?

Consumers, likewise, are victims and otherwise terrorized by these vicious criminals and by the prospect of such an encounter in our stores.

Unless some method is devised assuring pharmacists both greater protection from this type of crime, NARD believes that pharmacists will in even greater numbers refuse to stock or handle controlled substances altogether.

Senator MATHIAS. I am sorry to interrupt you, but I must in fairness to the other scheduled witnesses. Without objection, the balance of your material will be included in the record.

Mr. WOODS. Mr. Chairman, we appreciate very much the opportunity of being here. On behalf of the officers and executive committee of NARD and the staff, we will be glad to cooperate and provide any additional information and assistance.

Let me just add one point. Recently we found out that one member of NARD in Columbus, Ohio, has shot 20 criminals who attempted to rob him. He has killed 11. The 12th is hospitalized in critical condition. That is how serious it is.

Thank you very much for the opportunity.

Senator MATHIAS. Thank you very much. I appreciate your cooperation in helping us keep to our schedule.

We next have a panel of four witnesses. Mr. Shelton Fantle is president and chief executive officer of Peoples Drug Stores. Mr. Melvin Rubin is himself a robbery victim. He is a pharmacist. Mr. David Banta is executive director of the Maryland Association of Retail Druggists. Mr. Stanley Siegelman is editor of American Druggist magazine. Gentlemen, if you will take your places at the witness table.

Let me say to Mr. Woods that we are keeping the record open, and I say this to the witnesses now at the table. We are keeping the record open. Gentlemen, we will suspend for 30 seconds. I will be right back.

[A short recess was taken.]

[The prepared statement of Mr. Woods and additional submissions of the National Association of Retail Druggists follow:]

PREPARED STATEMENT OF WILLIAM E. WOODS

Mr. Chairman, Members of the Subcommittee :

I am William E. Woods of Easton, Maryland. I serve as Chief Executive Officer of the National Association of Retail Druggists. My colleagues this morning are Darwyn Williams, representing the Executive Committee; Joe Mosso, Third Vice President; and John Rector, Director of Government Affairs.

The National Association of Retail Druggists (NARD) represents owners of more than 30,000 independent pharmacies, where over 75,000 pharmacists dispense more than 70 percent of the nation's prescription drugs. Together, they serve 18 million persons daily. NARD has long been acknowledged as the sole advocate for this vital component of the free enterprise system.

NARD members are primarily family businesses. They have roots in America's communities. The neighborhood independent druggist typifies the reliability, stability yet adventuresomeness that has made our country great.

As owners of independent pharmacies, our members are committed to legislative and regulatory initiatives designed to provide them a safe and fair chance to compete. We especially appreciate the opportunity to appear before the Subcommittee and present our views and recommendations on a variety of bills each with a common purpose: to provide a Federal deterrent to the alarming expansion of violence spawned by vicious criminals seeking federally controlled dangerous drugs from these small businesses.

We would like to express our special appreciation to the Subcommittee, its Chairman, and staff for the extraordinary cooperation that you have shown us in the planning of this legislative hearing. Additionally, we want to acknowledge the special commitment of Senators Grassley, Sasser, Jepsen and Heflin in helping to fashion an appropriate Federal response to such robberies. Their collective efforts and the 50 cosponsors of the various bills demonstrate that this is not a partisan matter and, in fact, never has been.[1]

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[1] Among the cosponsors of the first Senate pharmacy robbery bill introduced at NARD's request as S.2327 on August 7, 1973, were Taft (R. OH); Humphrey (D. MN); Fanin (R. AZ); Church (D. ID); Hansen (R. WY); and Bayh (D. IN). See Appendix I for current Senate cosponsors.

You have renewed our hope that our objective may yet be achieved during the 97th Congress by an appropriate amendment to the Controlled Substances Act of 1970 (CSA).[2]

When the proposals, which eventually became the CSA, were before the Congress, NARD supported this landmark reform. It was a major step forward in bringing together into a single statute the scattered and fragmented laws relating to controlled drugs.

In the intervening years, we have worked closely with the Federal agencies responsible for its implementation to help assure that the law and its regulations were understood by pharmacists and that our communites were protected from drug diversion and abuse.

NARD early recognized the value of public awareness of and education on the problem and issues of drug abuse and misuse. The independent retail druggist has played and continues to play this vital role in each of our nation's communities.

Then as today, NARD was deeply concerned over the growing abuse of dangerous drugs. In the mid-Sixties as part of a national campaign in cooperation with the Department of Justice, we distributed more than 100,000 kits entitled "Never Abuse - Respect Drugs" to support pharmacists in their fight against drug abuse.

Presently, NARD is working closely with First Lady Nancy Reagan and ACTION, the national volunteer agency, to explore ways voluntary associations and the private sector can work with parents and youth to alleviate drug abuse and its attended damages. In fact, it was in recognition of NARD's pioneering efforts in fostering such public awareness, that NARD was selected to represent pharmacy at the recent two-day White House Strategy Session on Drug Abuse and the Family.[3]

In summary, NARD and its members have a long history of almost 100 years of cooperation with government officials responsible for the proper controls of drugs that have a potential for abuse.

As mentioned, we supported the Controlled Substances Act legislation when it was before Congress and the implementing regulations and feel we made substantial contributions during the molding and formulation of each. We believe that the true objectives of the Federal government in this area and those of our members are identical where the practice of pharmacy is concerned: to eradicate drug diversion and drug abuse, and to support appropriate government controls over CSA drugs that have many important and beneficial uses in the medical care drug armentarium of physicians and pharmacists.

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[2] Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, P.L. 91-513, 84 Stat 1736, enacted 10/27/70, effective 5/1/71, is known as the Controlled Substances Act (21 USC 801 et. seq.)

[3] White House briefing on Drug Use and the Family coordinated by Action's Drug Use Prevention Program and held at the White House on March 21 and 22, 1982.

It is ironic, therefore, that the one major dispute we have and have had, for more than a decade, with the Federal government's drug control strategy is the failure to acknowledge and address the singularly most violent mode of controlled substance diversion: Robbery of CSA Registered Retail Pharmacies to obtain dangerous controlled drugs.

From day one in the development and consideration of the measures that became the CSA, NARD urged the Department of Justice and Congress to provide sanctions against the robbery of pharmacies to obtain dangerous drugs. Before this Committee in 1969,[4] and the House Committees in 1970,[5] and in correspondence with Department officials[6], we cautioned that failure to acknowledge such violence targeting our members would only return to haunt. Illustrative of our advise is this following comment NARD made before the House Interstate and Foreign Commerce Committee:

"Many retail pharmacies have been robbed by criminals searching for narcotics and dangerous drugs. It is our feeling that such criminal acts would be lessened if the Justice Department could take a greater interest in pursuing such cases. The deterrent would be accelerated. If only local authorities pursue these cases, the impact may not be great enough. Since the reason for the proposed legislation is the great national interest and social harm involved, the NARD recommends that consideration be given to ways for the Justice Department to become involved in cases where robberies of retail pharmacies are aimed at drugs and products which are the subject of these bills."

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[4] Narcotics Legislation Hearings Before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, United States Senate, Ninety-First Congress, First Session. September 26, 1969. pp 485-549 at 491 (See Appendix II).

[5] Drug Abuse Control Amendments, Part 1, Hearings Before the Subcommittee on Public Health and Welfare of the Committee on Interstate and Foreign Commerce, House of Representatives, 91st Congress, 2nd Session, Feb. 19, 1970 at 415-418 (Serial No. 91-45) See Appendix III

[6] See Appendix IV, for relevant selected correspondence 1970 to date.

Eventually, the 91st Congress did act by enacting the single most important statute relating to drug control since passage of the Harrison Act. Tragically, pharmacists, their staff, and customers were ignored and left unprotected from the violent diversion of dangerous drugs.

It appeared the Congress was so focused on the substances of abuse it was blinded as to the predictable victims of violent efforts to obtain these same substances.

If it was an awareness of victims and violence that would be necessary to get the attention of the Federal government,as we had predicted, the passage of time would yield the body count.

NARD each year urged the Congress to act. During Senate Judiciary 1974 oversight hearings on the Controlled Substances Act, for example, we testified:[7] "NARD and its members are greatly concerned over the increased risk of crimes of violence in pharmacies. Crimes of violence in pharmacies related to controlled substances are increasing at an alarming pace. We have provided the committee with many, many new stories concerning similar crimes throughout the country."

"As the CSA is effectively implemented to dry up the illicit source of controlled substances for pushers and users, there is a correspondingly increased pressure and threat upon legitimate outlets possessing quantities of these substances. Pharmacies are a primary target[8] for those in need of drugs for a number of reasons, not the least of which is that pharmacies are open and accessible to just about every segment of the population and are found in inner city areas when most other businesses have fled."

Each year the National Association of Retail Druggists has adopted a policy statement regarding pharmacy crime. The following text unanimously adopted at our 83rd Annual Convention in San Antonio, Texas, on September 24, 1981, states our members' recommendation, and that of other pharmacists, as to why there is a problem and what can be done to remedy it:

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[7] The Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513) and its relationship to the pharmacists, 93rd Congress, 2nd Session, March 28, 1974, pp 3-99 at 76-78. (See Appendix V).

[8] For example in CY 1980 1,723 of a total 1,781 robberies to obtain controlled substances reported to DEA were perpetrated against Registrant Pharmacies. See DEA Drug Theft Analysis - CY 1980.

> WHEREAS, the pharmacy community, and NARD members in particular, are experiencing a record number of violent acts, usually robberies, aimed at obtaining federally regulated drugs; and
>
> WHEREAS, the effective enforcement of the 1970 Federal Controlled Substances Act, by the Federal Drug Enforcement Administration, has been a major contributor to the radical escalation in such pharmacy robberies; and
>
> WHEREAS, the owners of independent retail pharmacies, their staff, consumers,and families, as well as store neighborhoods, need federal investigation and prosecution to combat such terror and violence; and
>
> WHEREAS, federal mandatory minimum penalties, without probation or suspended sentences, would serve to curb violence directed at pharmacies stocking federally controlled substances:
>
> RESOLVED that NARD continue its leadership role in the Congress for passage of NARD's Pharmacy Protection and Violent Offender Control Act of 1981 or for the enactment of similar legislation.

The anamoly, however, has remained. It is a serious violation of Federal law if dangerous drugs are diverted from a pharmacy by fraud or by improper prescribing. Yet, when the same drugs are illegally obtained in daytime robberies by vicious assailants who terrorize customers, employees and our members, no Federal robbery sanction is available.

In fact, enforcement of provisions of the 1970 Controlled Substances Act, designed to reduce forms of diversion other than robbery, has increased both the street value of the drugs sought and the likelihood of robbery as a more preferred method for obtaining these drugs. The reality is that pharmacists are on the front line in the mutually cooperative effort to prevent diversion and abuse of legitimate drugs. Pharmacists do not, however, seek combat pay for participating in this risky joint venture whereby they provide highly dangerous, although oftentimes lifesaving, Federally controlled substances. What we do want is a comparable amount of Federal involvement in the protection of pharmacists, their families, employees, and customers.

Since passage of the Controlled Substances Act, criminals who in the past relied upon access to illegal drugs or who relied upon nighttime break-ins, have on an ever-increasing basis been entering in the daytime, through the front door, usually armed with a dangerous weapon.

Let there be no doubt about it, the record - the facts - are sad but dramatic. The following chart tells it all.

Since 1973 when NARD drafted the first corrective legislation which was introduced in the Senate, robberies of retail pharmacies to obtain controlled substances have increased an incredible 160%!!

The trend continues unabated, in fact it has accelerated. From 1976 to 1981 when robbery nationally increased by one third, the robbery of pharmacies to obtain controlled drugs, increased by 113%! Pharmacy thefts increased by 19%. During this same period, robbery as a percent of total pharmacy theft increased by almost 100% from 15% to 28%.

Robbery generally - a fast growing crime of violence - has increased nationally by 31%.[9]

What of the victims? Those terrorized, assaulted, maimed, and yes, murdered? We have done our level best, as has the American Druggist since 1980 to accurately document this carnage.

Over the past decade, our NARD publishers have reported the growing incidence of this violence. Several recent NARD Journal features entitled the "Pharmacy Clock" are contained in the briefing kit that we provided the Committee. Additionally, our newspaper clipping files have helped document the growing number of assaults and murders.

Referring again to the NARD Chart, what we do know is that since 1973 when legislation to make such robberies a Federal offense

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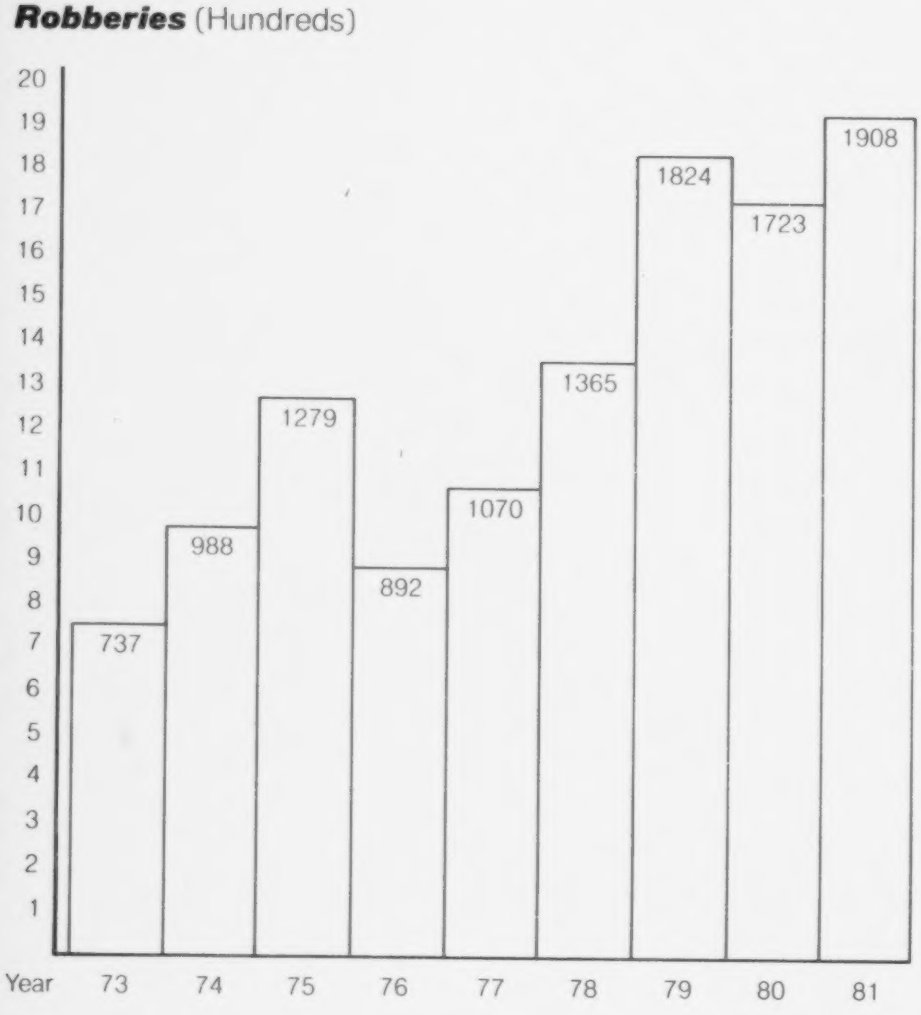
[9] See FBI chart on following page.

Incidence of Pharmacy Robberies to Obtain Controlled Substances 1973-1981*

160% Increase



*Source: DEA

Reprinted by permission of NARD *Journal*. © 1982, National Association of Retail Druggists was introduced in the Senate, 11,786 stores have been the victims of robberies to obtain controlled substances. Justice Department (FBI and LEAA) studies reveal that one in five robberies result in death or some injury to victims. Thus, during this period, approximately 2,357 NARD members, pharmacists, employees, or customers have been injured or killed in the course of such robberies.

The government, however, has artfully covered up the actual statistics.

When our pharmacies are robbed, our members must file a form - DEA Form 106 - as to the particulars of the robbery. Item number eleven (11) mandates that any injury be reported as well as a comment as to the nature of the harm.[10]

CSA pharmacists must file this theft form or face felony penalties ranging up to 8 years in prison or a $60,000 fine or both for not reporting to the Federal government the particulars of a robbery which is not the subject of any Federal penalty.

As if to add insult to injury, these reports of woundings, brutal beatings, and murders committed in conjunction with pharmacy robberies are ignored by the DEA!!

Look long and hard through reports on drug abuse and drug related violence, but you will not find an accounting of these victims.

Mr. Chairman, NARD requests that the Subcommittee explore what appears to be a cover up of data that would add persuasively to the impressive support for action of the pharmacy robbery legislation.

If the Department of Justice is fully committed to curbing violence, especially drug related violence, it occurs to us that they would have presented this data to the Committee. In any case, we believe that pharmacists, the public, and the Senate are entitled to all the FACTS.

Some speculate that DEA's long-term opposition to the pharmacy robbery legislation would explain the failure of the Department to report these facts.

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[10] See Appendix VI for Copy of DEA Form 106

Another corollary to DEA's unenthusiastic response to the robbery of pharmacies is the manner in which the agency understates the impact of such crimes. If, for example, an armed assailant entered an independent retail pharmacy owned by one of our members, harassed and abused the staff and customers and left with 282 tablets of dilaudid, never to be heard of again, DEA would record the robbery and assess its importance on the basis of the replacement cost of the drug stolen or approximately $30.00. On the other hand, if the same armed robber, one block away, was confronted by a DEA agent and arrested for illegal possession of the controlled substance, the agency would catalog such a case as one involving drugs with a street value in excess of $11,000.

Last year, Mr. Henry Waxman, the Chairman of the Subcommittee on Health and Environment of the House Energy and Commerce Committee, whose jurisdiction includes the CSA, requested NARD to analyze DEA's objection to the pharmacy robbery legislation and to report our assessment. The request and our response are attached.[11]

Several of the issues NARD raised then are worth special emphasis today.

DEA claimed that it could not possibly investigate 7,000 annual pharmacy thefts. Actually, the legislation in question relates to approximately 30% of the thefts: the robberies.

Once the NARD bill is enacted, we would expect DEA to pursue such robbery violations with at least the same enthusiasm that the agency has demonstrated regarding other violations of the ACT. For example, the attached "A Study of Federal Arrests and Dispositions of Practioners: 1972-1977"[12] reviews past efforts of DEA directed at medical practitioners, including doctors of medicine, doctors of osteopathy, veterinarians, dentists and podiatrists. Seventy-seven percent of these cases resulted in conviction and the majority received a prison term, with a median term of 36 months. Personnel and other costs of this and related efforts are not available to us, but we would hope that at least comparable persons and dollars would be made available to deter those intent upon robbing pharmacies.

In fact, because of the violent nature of the target of NARD's legislation, even greater effort would be appropriate. After all these would be felonies involving narcotics, dangerous drugs, weapons and personal violence, each a top priority of Attorney General Smith.

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[11] See Appendix VII

[12] See Appendix VIII

Certainly not every conceivable case would be exclusively handled by the Department. The NARD legislation would provide concurrent jurisdiction and in no way would it preempt the appropriate and necessary effort by state and local authorities.

The agency also cited the already crowded Federal dockets as an additional basis against making such robbery Federal crimes. While we are likewise aware of the growing number of criminal matters pending in Federal courts, the NARD legislation would require that all robbery cases be handled on an expedited basis.

In further response, DEA claimed that defendants do not necessarily receive stiffer sentences in the Federal system than in the state systems. Whether that is the case or not is not addressed by the NARD bill. What is included, however, is a mandatory minimum penalty for such robberies without the possibility of probation or suspended sentences. Thus, in every case, the sentence imposed would be an appropriately severe one. Additionally, stiffer penalties would be required when such robberies involved assault or use of dangerous weapons and especially in any case in which death or serious harm resulted during the robbery. The NARD bill, therefore, would provide a uniform, truly deterrent response in each of the states to robbery to obtain Federally controlled drugs.

Additionally, the agency stated that "local police departments are best equipped to respond to this type of crime." However, when asked in a subsequent question to set out the most significant challenges confronting the agency in FY 1981, DEA took a different approach. The agency pointed out that the diversion of legitimate drugs from the retail level is one of three major sources of drugs of abuse. The other two sources were Southwest Asian heroin and Colombian marijuana and cocaine. DEA then reviewed four major difficulties in attacking these sources of drug abuse. They stated that "state and local governments here are not resolved or not prepared to address the retail diversion problem on a large scale." NARD has never questioned the resolve of local law enforcement in such matters.

However, it does agree that because of the unique Federal imprint on such crimes and their national scope, state and local efforts should be supplemented in order to help reduce retail diversion.

As noted above, robbery is increasing in raw numbers, as a percent of total retail diversion and in terms of total dosage volume diverted at the retail level. Our members need all the law enforcement support they can get.

Under NARD legislation, we envision our members working closely with local, state and Federal authorities to maintain a coordinated attack on pharmacy robbery.

DEA also has claimed that another obstacle to controlling the abuse of legitimate drugs obtained by retail diversion is that "enforcement successes are not adequately supported by uniform sentencing appropriate to the egregiousness of the crimes."

NARD concurs wholeheartedly in this view, especially in the case of the robbery of the pharmacies. The mandatory sentencing scheme set out in our legislation will help guarantee uniform sentencing for comparable crimes in all states. Likewise, the NARD legislation, with its special provisions for repeaters, those who use violence and those who inflict fatal or near fatal violence, will assure that the sentences imposed are appropriate to the violent nature of the crimes.

We do not idly review what the agency has said in the past. DEA expressed opposition has been cited by friend and foe as the major stumbling block to passage of the legislation in past Congresses, including defeat in the House after the Senate on two occasions voted favorably for Federal jurisdiction over the robbery of pharmacists to obtain controlled substances.

Although we have heard it before, a new day may have arrived. Last spring then,DEA Administrator, Peter Bensinger, responded on behalf of Attorney General Smith to us in part as follows:[13]

> "As you know, we are currently preparing amendments to the CSA which will address the overall problem of theft and robbery with respect to DEA registrants. Our own proposals are quite similar to those enunciated in NARD's Pharmacy Protection and Violent Offender Act. We, too,

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[13] See letter from Mr. Bensinger to William E. Woods, NARD, of May 18, 1981.

believe that minimum mandatory sentences will provide for a meaningful deterrent to pharmacy crime."

More recently, Francis Mullen, DEA's new Administrator, in his first presentation to a pharmacy leadership meeting, before a standing room only audience at our March National Legislative Conference[14] affirmed this new direction. Although the specifics of the agency's new approach are still not available, this is indeed a welcome change. This development, as well as the progress made in the 96th Congress, underscores the opportunity ahead.

Despite the long haul since 1969, we are - today - more optimistic than ever. The tragic and growing injury and body count of pharmacists and consumers in each of our communities has no doubt yielded the progress we can report today:

1. A record number of pharmacy robbery bills introduced in the 97th Congress.[15]
2. A record number of cosponsors of pharmacy robbery bills including 53 Senators and more than 200 members of the House of Representatives.
3. The scheduling of S.2572 with its pharmacy robbery sections (Title IX, Part J) on the Senate Calendar.[16]

Also relevant is the recent announcement by Attorney General Smith that the FBI would break with precedent and become involved with drug diversion and traffic cases, especially those involving violence. This coupled with the unparalled expertise of the FBI in robbery cases and the recent merger of the FBI and the DEA provide additional reasons to believe that unlike the past ten sessions, the 97th Congress 2nd session will have the opportunity - in both houses - to vote to protect the public and retail pharmacies from the havoc engendered by those who violently seek to obtain Federally controlled drugs.

Mr. Chairman, your interest as demonstrated, in part, by these hearings is another reason for our optimism.

We salute each Senator who has authored the bills the subject of today's hearings and understandably express a strong preference for features of NARD's Pharmacy Protection and Violent Offender Act.[17] These include:

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[14] See Appendix IX NARD Journal, May 1982 pp 18-19.

[15] A total of 16 bills including 7 in the Senate and 9 in the House.

[16] Introduced May 26, 1982 - read twice and placed on the Senate Calendar Order Number 599.

1. Mandatory minimum penalties for the robbery of pharmacies to obtain Federally controlled substances;
2. Additional mandatory penalties for repeat offenders;
3. Mandatory penalties for those who conspire to commit such robberies;
4. Denial of probation and suspended sentences to those convicted of such robberies; and
5. A requirement that the FBI include pharmacy crime, including robberies and its victims in its annual Uniform Crime Report.

Congress has specifically provided that a person who manufactures, distributes, dispenses or possesses a controlled substance, with intent to distribute, is subject to Federal criminal prosecution and penalties.

Similarly, if a person knowingly or intentionally diverts possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge including by improper prescribing or dispensing or outright diversion by a registrant's employee. Federal jurisdiction and penalties are available.

In such cases, the extensive investigational resources of the U.S. Department of Justice are available.

These cases are pursued in Drug Enforcement Administration and U. S. Attorneys' offices throughout the United States. The statutory authority in such matters is not limited by the value of the controlled drugs involved, by whether there has been a pattern of similar conduct involved, by whether violence has accompanied the crime or by other special statutory criteria.

Thus, present law reflects appropriate Federal interest when controlled substances are obtained through non-violent theft, such as forgery. As the label warning reminds us all, even simple possession without a prescription is a serious Federal violation. Their deterrent impact is clear. Yet, there is no Federal sanction for robbers, usually armed, who violently abuse customers, employees, or the owners we represent.

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[17] See Appendix X for: (a) Full text of NARD bill and (b) comparison of various Senate bills.

We believe in the deterrent impact. We agree with the DEA when it asks that we request our members to post signs that it is a Federal offense to obtain controlled substances by forgery. It is a deterrent. But, what should we tell our members when they are shot, maimed, yes, and murdered, by robbers attempting to obtain controlled substances? Sorry, the Federal Government is interested in forgery, other diversions, but not brute violence to obtain narcotics

We do not suggest that ordinary crimes in pharmacies, like robbery and burglary, be blanketed into Federal jurisdiction. However, we do request that crimes of violence - assault, robbery, murder, and the like - involving controlled substances be subject to Federal jurisdiction. If a pharmacy were robbed and only money taken, that crime would rightly be a matter of local jurisprudence. However, if the felons clearly were motivated by the presence of, or a need to obtain, controlled drugs, evidenced by drugs being part of the booty, then we believe that Federal jurisdiction and prosecution ought to be authorized.

The NARD Pharmacy Crime Bill has the vital support of the Joint Commission of Pharmacy Practitioners (JCPP), comprised of the:

American College of Apothecaries
American Society of Consultant Pharmacists
American Society of Hospital Pharmacists
National Association of Chain Drug Stores
National Association of Retail Druggists; and
National Drug Trade Conference (NDTC), comprised of the:
    American Association of Colleges of Pharmacy,
    Drug Wholesalers Association, Inc.,
    National Association of Chain Drug Stores, Inc.,
    National Wholesale Druggists Association,
    Pharmaceutical Manufacturers Association,
    The Proprietary Association, and
    The National Association of Retail Druggists.

Our members are health care professionals, not policemen. Nor are they experts in the art of self-defense. Through no fault of their own, pharmacists have been placed in a situation where their lives and property are continually at risk.

NARD believes that pharmacists ought to be supported as they make the sacrifices which necessarily accompany this national push to reduce drug diversion and abuse.

Failure to act has had many consequences. The scandalous increase in actual robberies illustrated by the cited chart tells only part of the story.

The street value of the drugs stolen by these robberies is estimated in the hundreds of millions of dollars. Yet monetary value is only one element of the havoc caused by pharmacy robbery. One in five robberies results in death or some injury to victims. Merchandise can be replaced, but what value do we ring up for human carnage and terror?

Consumers likewise are victims and otherwise terrorized by these vicious criminals and by the prospect of such an encounter in our stores.

Unless some method is devised assuring pharmacists both greater protection from this type of crime and deeper involvement of Federal law enforcement machinery and personnel, NARD believes that pharmacists will in even greater numbers refuse to stock or handle controlled substances altogether. Such action would have serious detrimental effects on health care which none of us would welcome. But there is a limit which society, just in humanistic terms, cannot expect pharmacists to exceed.

As we stressed to the Senate Small Business Committee during the hearings on Crime and its Impact on Small Business:[18]

"Pharmacists, as owners of small businesses, are in a unique position - robbers want the merchandise in the store, not the money...The choice is not pleasant. Either carry the narcotics to serve your patients and be subjected to robbers who want the drugs or don't carry them, thereby protecting your life. But, then you deny help to customers, lose their patronage, and possibly your entire business."

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[18] Crime and Its Impact on Small Business Hearing before the Select Committee on Small Business, U. S. Senate, 96th Congress, 2nd Session, May 29, 1980, pp 82-91. (See Appendix XI).

The brutalization of our pharmacies has created other more subtle havoc: customers denied access to essential pharmaceutical products; accelerated levels of stress and burnout, including some who have sold their stores; and tragically, a growing number of pharmacy school graduates, full of free enterprise enthusiasm, who have declined a marketplace career.

We solicit your support in obtaining Senate passage of the "Pharmacy Protection and Violent Offender Control Act". We stand ready to assist again, as we have on each past occasion. It would establish Federal law enforcement as an essential aspect of any comprehensive pharmacy crime prevention effort. We believe it would provide Federal law enforcement equity to an entire class of health care professionals - retail pharmacists - whose plight as of this moment has been regretfully ignored by the Federal government.

We recognize that enactment of the NARD bill would be no panacea; pharmacy crime is unlikely to magically disappear.

In fact, NARD is engaged in a variety of activities to assist its members to more effectively deal with pharmacy robbery and crime generally. Our Journal had recently featured articles on crime prevention, handgun safety, what to do during and after a robbery and other related subjects.[19]

As part of our state clearinghouse on pharmacy crime, we have worked closely with state legislators and pharmaceutical associations and are using the NARD Pharmacy Protection and Violent Offender Control Act as a model. California and Alabama are among several states that have enacted new state laws.

Likewise, we recommend and continue to work with congressional small business advocates, including Mr. Dreier and Mr. Matsui, and to support legislation including their H.R. 4020 that would establish small business tax credits up to 15% of the purchase price of security devices designed to help deter robberies.

Effective October 1, 1980, we have provided each NARD member -

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[19] See Appendix XII

without added cost - coverage under our Felonious Assault[20] Insurance Plan, which includes a $50,000 death benefit and a $25-50,000 benefit for loss of sight or limbs resulting from an armed robbery.

The family of a key member of the NARD Committee on National Legislation and Government Affairs, Howard Sudit, was among the beneficiaries of the felonious assault policy. Howard was murdered on October 21, 1981, by an armed assailant attempting to obtain controlled substances from his Avenue Pharmacy in Charleston, S.C. Prophetically, only weeks before his murder, Howard had again urged to increase our effort for passage of the violent pharmacy robbery legislation.[21]

Howard's case is hardly unique. At the recent 14th Annual Conference on National Legislation, when Senator Grassley inquired of pharmacy leaders from across the nation, almost every person had been recently terrorized by robbers seeking controlled drugs.

The increased threat of violence and crimes in pharmacies is a direct result of the stringent controls imposed by the CSA. It is only fitting that the resources and facilities of the Federal Government be made available to protect pharmacies and apprehend those bent on circumventing the controls of the law.

Government competition with their businesses and recent high interest rates are economically killing small business. At least our members will personally survive any economic assault on their livelihoods! It is a cold reality, however, that some--an ever increasing number--will not survive the robbers' assaults. Other pharmacists and their customers--your constituents--will live, yet carry the scars of wounds, actual and emotional, for life. Still others will no longer pursue a retail druggist profession, that as recently as September 1981, George Gallup found is held in high esteem--second only to clergy--by the American public.

We wholeheartedly concur with Senator Thurmond's recent comment to the Senate in urging swift adoption of the pharmacy robbery provision of S.2572, he said in part:

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[20] See Appendix XIII

[21] For relevant correspondence, See Appendix XIV

"I am convinced that by adopting this language, we will be taking a major step toward protecting pharmacists all across America, from these often violent crimes.

Although we cannot eradicate a crime by the single stroke of a pen, we can take steps which will discourage those who think about committing such crimes. By passing the pharmacy crime section of this bill, we will be sending a clear signal to drug addicts and criminals that the Federal Government will no longer stand idly by while they run roughshod over this vital industry."

Again, on behalf of the Officers, Executive Committee and members of NARD, we thank you for the opportunity to appear and to continue to participate in the formulation of the Federal response to pharmacy robbery.

We recently asked each member of the 97th Congress (2nd Session) the following questions.

How long will you tolerate the lack of Federal interest in the reign of terror that is being visited upon the drug stores in your district? How many more small business owners, their employees, or customers must be brutalized or killed before the Congress acts to provide appropriate Federal protection to those whom you trust to dispense controlled drugs to your constituents, friends, and family?

We hope that you answer by sending the strongest possible bill to the House of Representatives (perhaps via S.2572) before the July 4, 1982, Recess.

APPENDIX I

NARD OFFICERS

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JAMES H VINCENT, CHAIRMAN
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THE NATIONAL ASSOCIATION OF RETAIL DRUGGISTS

EXECUTIVE VICE PRESIDENT • WILLIAM E. WOODS
205 DAINGERFIELD ROAD, ALEXANDRIA, VA 22314
(703) 683-8200

Seven minutes from the Nation's Capitol

CO-SPONSORS OF ONE OR MORE OF THE SENATE BILLS TO MAKE ROBBERY OF A PHARMACY TO OBTAIN A CONTROLLED SUBSTANCE A FEDERAL OFFENSE

As of June 10, 1982

Andrews (ND)
Baker (TE)
Baucus (MT)
Biden (DE)
Boren (OK)
Bumpers (AR)
Burdick (ND)
Byrd (VA)
Chiles (FL)
Cohen (ME)
D'Amato (NY)
DeConcini (AZ)
Dixon (IL)
Dole (KA)
Domenici (NM)
Durenberger (MI)
Exon (NE)
Ford (KY)
Garn (CT)
Goldwater (AZ)
Grassley (IO)
Hatch (UT)
Hawkins (FL)
Helfin (AL)
Heinz (PA)
Hollings (SC)
Humphrey (NH)
Inouye (HI)
Jackson (WA)
Jepsen (IO)
Johnston (LA)
Laxalt (NV)
Matsunaga (HI)
Mattingly (GA)
Melcher (MT)
Mitchell (ME)
Murkowski (AK)
Nickles (OK)
Nunn (GA)
Pell (RI)
Pryor (AR)
Randolph (WV)
Rudman (NH)
Sasser (TE)
Schmitt (NM)
Simpson (WY)
Stevens (AK)
Symms (ID)
Thurmond (SC)
Tower (TX)
Wallup (WY)
Zorinsky (NE)

SENATORS NOT CO-SPONSORS

Abdnor (SC)
Armstrong (CO)
Bentsen (TX)
Boschwitz (MN)
Bradley (NJ)
Brady (NJ)
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Cannon (NV)
Chafee (RI)
Cochran (MS)
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Dodd (CT)
Eagleton (MO)
East (NC)
Glenn (OH)
Gorton (WA)
Hart (CO)
Hatfield (OR)
Hayakawa (CA)
Helms (NC)
Huddleston (KY)
Kassebaum (KA)
Kasten (WI)
Kennedy (MA)
Leahy (VT)
Levin (MI)
Long (LA)
Lugar (IN)
Mathias (MD)
McClure (ID)
Metzenbaum (OH)
Moynihan (NY)
Packwood (OR)
Percy (IL)
Pressler (SD)
Proxmire (WI)
Quayle (IN)
Riegle (MI)
Roth (DE)
Sarbanes (MD)
Specter (PA)
Stafford (VT)
Stennis (MI)
Tsongas (MA)
Warner (VA)
Weicker (CT)

Appendix II

[From Narcotics Legislation hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, U.S. Senate, 91st Cong., 1st sess., Sept. 26, 1969. Pp. 485–549, at 491.]

* * * * * * *

Chairman Dodd. And if you, yourself, would stop it, then you would not have these hearings and you would not have any trouble. There would not be any need for these things, but you are sure to get into severe control with these preparations, the sale of these preparations, unless the practice is stopped.

Mr. Woods. Well, we will work with you in any way, Mr. Chairman, and we support the provisions of the legislation that we feel do provide tighter controls.

Chairman Dodd. Well, I am sure you will, but we ought to get at it. We should lick it now. It is bad enough now, and every year here it is getting worse, all the time. I am told it is not just teenagers, that it involves a sizable number of adults and in some areas it is a really grave problem. You must know that, too.

Mr. Woods. Yes, sir.

Chairman Dodd. As to the final recommendation, Mr. Chairman, concerning theft and robberies, many retail pharmacies have been robbed or burglarized by criminals searching for narcotics and dangerous drugs.

Too many retail pharmacists have been murdered, blinded or assaulted as a result. With enactment of the subject legislation, there will hopefully be a substantial reduction in drug abuse.

We are concerned, however, that the robberies, assaults and senseless murders in retail pharmacies may increase. It is our feeling that such criminal acts would be lessened if the Justice Department could take a greater interest in pursuing such cases. The deterrent would be accelerated. If only local authorities pursue these cases, the impact may not be great enough.

Since the reason for the proposed legislation is the great national interest and social harm involved, the NARD recommends that consideration be given to ways for the Justice Department to become involved in cases where robberies of retail pharmacies are aimed at drugs and products which are the subject of these bills.

In conclusion, we appreciate the opportunity to express our views on this important legislation. We will be glad to provide any additional information or attempt to answer any questions that will be useful to the committee.

The retail pharmacists of this country are very much aware of the current drug abuse problems; they are anxious to be of service to this committee and to help make the proposed legislation effective.

Chairman Dodd. Thank you; I am sure that statement is accurate and everything you say here we are well aware of; I know you have been helpful, and I am sure you want to, I have not the slightest doubt about that, I do have a couple of questions.

You suggested expedited hearings for suspensions of the registration of only certain classes of drugs.

Mr. Woods. Yes, sir.

Chairman Dodd. And safeguards to the total business of retail drugstores.

Mr. Woods. Yes.

Chairman Dodd. Now, while a determination is being made?

Mr. Woods. Yes, sir.

Chairman Dodd. If I understand you, the drugstore abuse of the sale of amphetamines, should only be shut off on amphetamines until the matter is decided without doing any more about it.

Mr. Woods. This was a possibility.

Chairman Dodd. Yes, that is what I wanted to know.

Mr. Woods. Yes, sir.

Chairman Dodd. What is the practice, do you know, of most State boards with respect to this problem we are discussing now?

Mr. Woods. I am not too sure, Mr. Chairman. I think usually they have an investigation and a hearing, I believe, before they isolate the inventory or shut down the filling of prescriptions.

Chairman Dodd. I do not know about this action, and any information you have would be helpful.

Mr. Woods. I will be glad to find out and provide the committee with that information.

Chairman Dodd. They may have a method for dealing with the problem that we do not know about.

Mr. Woods. Yes.

Chairman DODD. I was interested in what you had to say about pharmacies and the record-keeping requirements of pharmacies, and particularly of section 3 or schedule III and schedule IV drugs. You say, that pharmacies could not be expected to adhere to such recording requirements.

Mr. WOODS. Well, I think they will make every attempt to comply with whatever is the final provision of the law. We are just saying——

Chairman DODD. This poses a real problem, you know. These are the drugs which are frequently channeled into illicit markets.

Mr. WOODS. Well, yes, sir, but if you have a beginning inventory and you keep all of the records subsequent to that and can make those available to support any sales or outgo of your drug or preparation, why, you would have an adequate check on them.

But, if every 2 years they have to inventory 2,000 or more items that they have never inventoried before, and you have like 10,000, have a bottle of 10,000 and they have to count to 7,491, it is quite expensive to provide that kind of inventory. They do not do that on any other preparation. There is no problem at all on class 1 and 2.

Chairman DODD. How about bottle counts?

Mr. WOODS. Well, this is certainly better than the count by tablet or capsule. But, again, we have some question whether an inventory every 2 years would provide you any more information than one every 5 years if you have all of the other records.

Chairman DODD. It means you would have 3 years less to divert. I do not mean you personally, of course, but I mean the pharmacists and pharmacies. That is the trouble. Anyway, we will try to find a solution or a resolution of this that is more satisfactory. This is another one of these tough ones.

Mr. WOODS. Yes, sir; we certainly agree with that.

Chairman DODD. Well, your helpful testimony will be given most careful consideration, and submit for us, if you will, the suggestions.

Mr. WOODS. Fine.

Chairman DODD. The ones you have described, because we want to get your advice, and we want to make this law as equitable, of course, and as fair and effective as it can be.

Chairman DODD. All right, Mr. Simmons.

Mr. SIMMONS. Mr. Chairman, to consume time, I would be happy to just briefly——

Chairman DODD. You mean to conserve time, do you not?

Mr. SIMMONS. Conserve time, all right, sir, I will agree with that.

I would be happy just to briefly review the education program that we developed in 1967 and made effective and placed kits, the drug abuse kits in the hands of our members throughout the country early in 1968.

Briefly, of course, the retail pharmacist, as many know, has maintained an important role in the community because the drugstore in America is a health care center, and in many instances a gathering place for young people it seemed proper to put these advantages to work in a drug abuse educational program or campaign.

After much preliminary work and careful planning the NARD program was launched. The National Association of Retail Druggists developed its first and basic kit on drug abuse in 1967 and we called it "Never Abuse—Respect Drugs."

I have with me today the basic packet used by pharmacists in conducting their own drug abuse educational program. "Never Abuse—Respect Drugs" was named because the initials spelled out NARD, to emphasize our sponsorship of this program. I also have the newest kit with me, and I will be glad to leave these two kits with the Chairman.

Chairman DODD. Fine.

(The 1967 kit was retained for subcommittee files.)

(The 1969 material referred to was marked "Exhibit No. 26.")

APPENDIX III

[From Drug Abuse Control Amendments, Part 1, Hearings Before the Subcommittee on Public Health and Welfare of the Committee on Interstate and Foreign Commerce, House of Representatives, 91st Cong., 2d sess., Feb. 19, 1970, at 415–418 (Serial No. 91-45)]

* * * * * * *

Mr. ROGERS. Thank you very much, Mr. Woods, for a very helpful statement.

Mr. Kyros?

Mr. KYROS? Mr. Woods, did you hear the testimony earlier about the zero inventory method this morning?

Mr. WOODS. Yes, sir; I did.

Mr. KYROS. Are you in favor of that procedure instead of having all of the recordkeeping that you seem to be unhappy about in the legislation?

Mr. WOODS. I am really not that familiar with the zero inventory. I have heard of it, but I am not that well acquainted with it.

Mr. KYROS. You complain, however, in your statement about the recordkeeping required for inventory.

Mr. WOODS. Particularly the inventory.

Mr. KYROS. What alternative would you propose?

Mr. WOODS. I really doubt that an inventory is necessary on this schedule III and IV drugs if the pharmacist is providing the records that he has been accumulating along with purchase, and then also we suggested the possibility of a 5-year inventory.

It may be the zero inventory would answer the purpose, but I do think by the use of the requirements of the State along with a lessening of these requirements, would certainly alleviate some of the burden.

Mr. KYROS. You spoke about too many pharmacists who have been murdered, blinded, and so on. Do you have any figures on that; for example, for the year 1969?

Mr. WOODS. I will be glad to try to obtain those figures, I do not have figures on that, but we get reports from time to time from the press and people we hear of and if we dry up to the sources from legislation such as this, that would make the controls more effective, we would anticipate some problems.

(The information requested was not available to the committee at the time of printing.)

Mr. WOODS. It is our understanding that where there is a large theft in a wholesale company or a manufacturer or something of that nature, the Justice Department does take an interest in it. But where it is a small retailer, they leave it up to the local authorities and that is the reason we brought it to the attention of the committee.

Mr. KYROS. Is it true in drugstores or rental pharmacies in many instances you have clerks there who sometimes steal the goods themselves and give them to their friends, especially when you have youngsters working for you?

Is that one way of getting illicit drugs on the market?

Mr. WOODS. I have no records on that, but the FDA records for diversion would indicate from their 10-year survey completed 5 years ago an average of something like 165 cases a year against retail pharmacies.

In some cases we understand it involved the type of drugstore personnel you are talking about. They may not have involved the pharmacist. I might say, too, this 165 a year during the 10-year period was less than 1 percent of the pharmacies of the Nation, so I don't think any substantial amount involves retail pharmacies. I think a lot of this illicit traffic comes from other and different sources that have been brought to the attention of this committee.

Mr. KYROS. On page 8 of your prepared statement you make the statement that "It is our feeling" speaking for the National Association of Retail Druggists, "that criminal acts against retail pharmacies would be lessened if the Justice Department could take a greater interest."

The problem, of course, is I think all of us today try to keep crime not only a local issue, but try to get local people to take care of local crimes. You are not urging that you would want to extend the jurisdiction of the Justice Department to take care of local robberies of local drugstores?

Mr. WOODS. No, sir; I would not want to go that far and I realize there are two sides to it, but it is my understanding that where there is a robbery of a warehouse or manufacturing group, that the Justice Department does take some interest in it. But if these criminals know the Justice Department is going to take no interest in surveying it or looking into crimes in retail pharmacies involving dangerous drugs, it may accelerate these crimes involving the retailers.

As I understand it now, Justice is taking no interest where there is a robbery of a retailer involving these drugs.

Mr. KYROS. That is the law as it is right now. I can understand your interest in having Justice get involved, but it would be an awful thing, it seems to me, if the Justice Department would have to put agents in almost every city and town for routine robberies.

Mr. WOODS. I think the thrust of what we had in mind was bringing this to the attention of the committee. If something can be done about it or with it, we would appreciate it.

Mr. KYROS. On page 8 regarding the penalties of $25,000 for any offense, including failure to keep any record, you felt that kind of a sanction was excessive because the law reads in section 502, "It shall be unlawful for any person, among other things, to refuse or to fail to make" and there is no intention in that offense and you would want that changed because you think it is unduly harsh?

The trouble is if someone has failed to keep records and the Justice Department comes in and tries to make an inventory subsequently and the records have not been kept, then the Justice Department is obstructed from checking that particular pharmacy or particular hospital or particular person that was handling drugs. Do you follow me?

Mr. Woods. Yes, sir. I think if we had a real bad actor who was following a consistent course of action, that we would say "throw the book at him," but if it is an inadvertent loss or failure to keep some record or purchase record involving maybe a stockroom clerk——

Mr. Kyros. In other words, you would say refuse or willfully fail to keep or furnish. You could use the word "willfully." This subject appears in the act on page 37, section 502(a), subsection (h), so you would say to "refuse or willfully fail to make, keep or furnish * * *" is that right?

Mr. Woods. Yes, sir.

Mr. Kyros. I think it is a point well made.

Thank you, Mr. Woods. Thank you, Mr. Chairman.

Mr. Rogers. As we ask groups as they come in where they feel diversion comes from or illegal traffic, when you get to the manufacturers, they don't feel that any comes from there. Then we get the wholesaler and they don't think there is any there, and then we get down to the doctors and they tell us it is not in that segment and the retail druggists now tell us there is none there.

Well, where do you feel all of this comes from? We have 900 agents supposedly to track all of this down and they come up with 4,000 arrests five per man for the year. I don't know how society gets inundated with all of these drugs from no sources.

Where so you think it mainly comes from? I don't believe there are enough robberies out of warehouses to supply all of this.

Mr. Woods. I don't believe there are either I think it is a factor and I can certainly appreciate your concern. I think, Mr. Chairman, that you put your finger on the real problem that has to be dealt with. I don't know the answer. I think there must be some way to determine this.

Mr. Rogers. I think so, too, and I think this is what we have to do and I feel probably it is an enforcement problem. I wonder, for instance, with retail druggists, somebody has a prescription from a doctor on a weight problem. It is not really very serious.

Well, how many times can they go in and fill that prescription?

Mr. Woods. It depends on what the doctor orders.

Mr. Rogers. Say it is amphetamines.

Mr. Woods. Usually it is 6 months or five refills.

Mr. Rogers. How often do you think that is adhered to?

Mr. Woods. I don't think there is too much of it now. Of course, some other people have records on this, but the pharmacists are concerned about the problem and they are concerned about the loss I don't think it is a significant factor of diversion. We never have a conference, a meeting, a national meeting that we don't have somebody from the Bureau of Narcotics and Dangerous Drugs of FDA on the program. This has been historical and we have made that type of effort to keep them informed and educate them and provide all types of materials for them.

Mr. Rogers. When someone takes in a prescription to be filled, what is noted on that particular prescription?

Mr. Woods. They keep this on file, the date that it was filled and who filled it. It is initialed by the pharmacists.

Mr. Rogers. Is anything stamped on it?

Mr. Woods. The number is stamped on it and it is even used on refills.

Mr. Rogers. Is anything stamped on the prescription that the person gives to the pharmacist?

Mr. Woods. The only thing the pharmacist would put on it would be the date and the number of the prescription.

Mr. Rogers. In his own records?

Mr. Woods. That's right.

Mr. Rogers. Does he make that notation on my prescription that the doctor gives me? Does he make any notation on this prescription?

Mr. Woods. Nothing except who filled it and assigned a number. There is only one copy.

Mr. ROGERS. He keeps a record of all of the drugs he puts out, does he not?
Mr. WOODS. Yes.

APPENDIX IV

NATIONAL ASSOCIATION OF RETAIL DRUGGISTS,
Washington, D.C., April 9, 1970.

Mr. MICHAEL SONNENREICH,
Deputy Chief Counsel, Bureau of Narcotics and Dangerous Drugs,
Department of Justice, Washington, D.C.

DEAR MR. SONNENREICH: During our testimony before Congress on controlled drug legislation and in conversations with officials of the Justice Department, representatives of NARD have expressed grave concern over the extent of criminal acts committed against pharmacy personnel involving narcotics and dangerous drugs. At all times we have expressed great fear that after enactment of the pending legislation, the crimes against the pharmacy profession will be accelerated because many present sources of illicit drugs will be dried up.

As a result of requests for documentation of our position, we have contacted some of the pharmacy leaders in the Metropolitan areas and states for information.

The purpose of this letter is to strongly urge the Justice Department to take any and all appropriate action both through recommending legislation and departmental measures to reduce the criminal acts against pharmacy personnel involving controlled drugs. We feel the results of our preliminary survey, which are enclosed, support our contention and will be useful to BNDD and members of Congress.

We realize that it is impossible and inappropriate for FBI Agents to investigate every drug store robbery that is a proper investigation for local police. However, we do think Justice should make it clear to the criminals and drug abusers of this country that you do not intend to let robberies and burglaries of controlled drugs take place in drug stores without taking a positive interest in these crimes. After all, these crimes involve a national socio-criminal problem which is the subject of Federal legislation and our members may soon be the hardest hit.

Twenty-three states and six metropolitan areas have told NARD they believe narcotics and dangerous drugs have a significant causal relationship with drug store robberies.

In twenty-three states and six metropolitan areas drug store burglaries usually involve narcotics and dangerous drugs.

In 21 states and six metropolitan areas pharmacy officials anticipate a significant increase in drug store robberies and burglaries when the present controlled dangerous drug legislation is enacted to dry up many present sources of these drugs. The responses of the two other states were "unknown" and "possible".

Enclosed is a preliminary tabulation of reports from 23 states and 6 metropolitan areas showing the extent of drug store robberies, assaults and murders involving narcotics and dangerous drugs. I am sure these figures for 1967, 1968, 1969 and for the past 10 years represent only a portion of these crimes because such records are not maintained in or even filed with all pharmacy association offices.

Other enclosures are quotes from pharmacy officials we have heard from and copies of pertinent news clippings.

With preliminary reports showing that in 1969 there were nine murders and 1,200 robberies involving controlled drugs and reporting states and cities expecting a significant increase in such crimes we view this problem as desperately serious and one to which we believe the Justice Department must assign high priority.

Sincerely,

WILLIAM E. WOODS,
Washington Representative and Associate General Counsel.

DEPARTMENT OF JUSTICE,
Washington, D.C., September 25, 1975.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 6035, a bill "To provide a penalty for the robbery of any controlled substance from any pharmacy".

H.R. 6035 would add a new section (2118) to chapter 103 title 18 United States Code, which would make it a federal offense to obtain or attempt to obtain a controlled substance from a pharmacy by robbery. This offense would be punishable by imprisonment for up to 20 years, a fine of not more than $5,000, or both. Any person who uses a dangerous weapon, assaults, or places in jeopardy the life of another person while committing or attempting to commit such an act would be punishable by a prison term of not more than 25 years, a fine of up to $10,000, or both. Anyone who kills another person while committing or attempting to commit such an act would be subject to imprisonment for not less than 10 years.

H.R. 6035 would extend federal jurisdiction to all robberies of pharmacies when the object of such crimes is to unlawfully obtain narcotics or other controlled substances. This jurisdiction would apply regardless of the interstate or intrastate nature of the offenses. At present, federal law does not apply to robberies of pharmacies. This is so because this crime has traditionally been considered a matter within the jurisdiction of the states, particularly of the local police. Apprehension of the individuals involved in such a crime depends in large measure upon swift police action, consisting of immediate inspection of the scene of the crime, prompt collection of relevant evidence, and interviews with witnesses whose recollections are still fresh. Federal law enforcement offices are often far removed from the scene of pharmacy robberies and have limited manpower and facilities available for investigating such offenses. Thus, there is no sound basis for the view that controlled substance pharmacy robberies can be more effectively investigated and even deterred simply by bringing such crimes within the ambit of federal law enforcement.

Were H.R. 6035 to be enacted into law, there would have to be a large increase in federal law enforcement and supporting personnel to adequately investigate robberies of pharmacies. In fiscal year 1974, a total of 988 robberies of controlled substances from retail pharmacies were reported to the Drug Enforcement Administration. The Drug Enforcement Administration estimated that it would require approximately eight agent man days to fully investigate the average pharmacy robbery. Also, Drug Enforcement Administration personnel would have to be given special training in investigating pharmacy robberies since they are not now engaged in such activity. It should also be noted that enactment of H.R. 6035 might well lead local law enforcement agencies to abdicate their responsibilities in this area, thereby increasing the burden on the Drug Enforcement Administration.

H.R. 6035 is similar to H.R. 4681, S. 2327, H.R. 8075, H.R. 7549, H.R. 9299 and H.R. 14184, all of which measures dealt with theft of controlled substances from retail pharmacies. The Department of Justice in the past has opposed enactment of legislation such as H.R. 6035. No information has come to our attention which would warrant a change in that position. Accordingly, the Department of Justice recommends against enactment of this legislation.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

MICHAEL M. UHLMANN.

NATIONAL ASSOCIATION OF RETAIL DRUGGISTS,
Los Altos, Calif., May 13, 1976.

Hon. EDWARD H. LEVI,
Attorney General,
Department of Justice, Washington, D.C.

DEAR MR. LEVI: President Ford's announcement of the new Cabinet Committee for Drug Law Enforcement in his recent Congressional message on the control of drug abuse is news which the members of the National Association of Retail Druggists welcome. We concur with the President's observation that it is vitally important that the efforts of the various federal agencies and departments be integrated into an effective overall progam. At times it has appeared to us that federal efforts on drug abuse control and enforcement suffered from a lack of coordination and consistency.

As Chairman of the Cabinet Committee for Drug Law Enforcement, we want you to know of some of the concerns and issues that confront practicing pharmacists and to seek your support and understanding in resolving them.

The major issue is the increase in the number of crimes of violence in pharmacies related to or associated with controlled substances. One of NARD's priority projects, and one of the leading concerns of practicing pharmacists, is providing increased assurance of the safety of our members. Crimes of violence in pharmacies related to controlled substances have increased at an alarming rate and our members are particularly concerned over this increased exposure to threats of violence and crime.

NARD has consistently urged that legislation conferring federal jurisdiction on crimes in pharmacies associated with controlled substances be adopted. We have been disappointed that the Administration has repeatedly opposed these legislation proposals and failed to suggest or support viable alternatives.

We are well aware of the contentions of the Department of Justice in opposing such legislation but submit that the Department's opposition is not grounded on fact or logic.

One reason for opposition given is that the Department's Drug Enforcement Administration would have to be given special training in investigating pharmacy robberies, the need for such training stemming from the assumption that DEA agents are not now engaged in such activity. While it is true that DEA agents do not investigate pharmacy robberies at present, they exercise plenary authority over controlled substance security, records, inventories, disposals and just about every other aspect of controlled substances in a pharmacy. To suggest that DEA agents would have to be educated on pharmacy operations is absurd unless DEA is willing to concede that its agents are now inadequately trained to fulfill the responsibilities already assigned under the law.

Additionally, the Department has suggested that the need for "swift police action" and response to robberies and burglaries precludes effective federal involvement in pharmacy burglaries and robberies. Logically, then, federal jurisdiction should not extend to any similar crime, like bank robbery. This objection purposely ignores that NARD has never requested "exclusive" federal jurisdiction and that local and state enforcement personnel would have full authority to respond to these crimes. We want federal jurisdiction to supplement, not supplant, state and local jurisdiction. Federal jurisdiction would provide the important follow-up investigative effort, the ability to pursue possible interstate or international leads, and the ability to coordinate crime data and patterns on a nationwide basis.

Furthermore, the objection that federal jurisdiction would lead local law enforcement agencies to abdicate their responsibilities over pharmacy robberies and burglaries is ridiculous. We cannot now, or at any time in the near future, envision a local police department refusing or failing to respond to a local call for assistance from a citizen in a robbery or burglary situation. The image of a local pharmacist being held at gunpoint and his local police department ignoring pleas for assistance seems as likely to us as a local fire department sitting by and watching a home burn to the ground because the owners had not paid their property tax.

The Department has also objected to NARD's proposed legislation on the basis that there is no sound basis for the view that theft of controlled substances from pharmacies can be deterred or even more effectively investigated for providing federal jurisdiction. We submit that it was precisely for these reasons that the Congress found it necessary to enact the Controlled Substances Act in the first place. The control of illicit traffic and use of drugs is simply not an isolated, nor local problem, which includes pharmacy crimes related to controlled substances, as well.

In our view, the increased threat of violence and crime in pharmacies is the direct result of the stringent controls imposed on controlled substances by the federal law. This confronts pharmacists with a serious dilemma: their support of increased and more effective control of illicit drug distribution channels results in further increases in violent crime and risks of physical harm to pharmacists. As the federal programs become increasingly effective, tremendous pressures are placed upon the legitimate channels and sources of controlled substances. We have a situation where the brunt of the fight against drug abuse and diversion is focused upon the thousands of community pharmacists who are ill-equipped to defend and protect themselves.

Our member pharmacies are widely dispersed and often open on holidays, weekends and late at night to serve the legitimate health needs of the surrounding community. Our member pharmacies are also traditionally modest operations with minimal staff and certainly without independent security personnel. Typically, a pharmacist may operate the pharmacy alone during various periods. Pharmacies which are readily accessible to the public are similarly accessible to the criminal elements and perhaps an earlier "hit" than most other public establishments.

Therefore, it is not difficult to understand that a drug-deprived abuser may see a community pharmacy as the easiest available source to fulfill his needs for controlled substances and, increasingly, we expect that "pushers" will seek out pharmacies as a source of supply to an even greater extent than at present, as illicit channels come under further scrutiny.

Furthermore, we think there is an inherent inconsistency in the present federal law enforcement policy. Congress has specifically provided that a person who dispenses or possesses a controlled substance with intent to distribute it is subject to federal criminal prosecution and penalties. Similarly, federal jurisdiction covers attempts by any person to knowingly obtain controlled substances by misrepresentation, fraud or forgery. However, a person who obtains controlled substances by force and violence is of no federal concern under the current law. We have the ridiculous circumstance that a user who passes a forged prescription risks the full federal enforcement effort but another who kills the pharmacist and steals the drugs is purely of local interest.

The President refers to estimates that as much as one-half of all "street crimes" are committed by drug addicts to support their expensive and debilitating habits. Other figures show that of the drug thefts reported to the federal government, approximately 80 percent of the thefts involved pharmacies. In a survey of press reports of crimes undertaken by our staff, we are certain that available statistics grossly underestimate the extent and toll of this drug related crime wave.

From the reports we have seen, pharmacy crimes related to controlled substances are perpetrated by knowledgeable and determined people who could be "professionals" moving from state to state, preying on pharmacies. These elements who could and would pursue pharmacies as a source of controlled substances for illicit uses can be expected to have the knowledge, or the ability to develop the knowledge, to circumvent virtually any physical or electronic security device that pharmacies could afford. Reports coming to us reveal that pharmacy entry may be gained by removal of a part of the physical building structure (cutting a hole in the roof or wall) which makes fully effective security precautions nearly impossible.

If local laws could have dealt effectively with the issue of illicit drug distribution, or if the matter were primarily a local problem, Congress would not have found it necessary to enact the Controlled Substances Act. Similarly, local laws, resources and personnel cannot adequately cope with this astronomically rising crime rate in pharmacies directly resulting from the increased and more effective federal measures designed to thwart drug abuse.

Our member pharmacists have become the men on the frontier of the effort to curb drug abuse, a role thrust upon them by the CSA and its implementation. Therefore, it is only fitting that the resources and facilities of the federal government be available to protect our practitioners and to assist in apprehending those bent on circumventing that law.

NARD would appreciate it if you would use your good offices to assure renewed federal efforts to provide greater protection against, and deterrence of, crimes in pharmacies involving controlled drugs. We would also ask your support and assistance in seeking Administration support for legislation providing federal jurisdiction over these crimes in pharmacies.

Sincerely,

WILLIAM D. WICKWIRE, *President.*

U.S. DEPARTMENT OF JUSTICE,
CRIMINAL DIVISION,
Washington, D.C., June 4, 1980.

WILLIAM E. WOODS,
National Association of Retail Druggists,
Washington, D.C.

DEAR MR. WOODS: It has come to my attention that my letter of May 16 has led to some confusion as to the position of the Department of Justice on the pharmacy robbery issue. The jurisdictional base in section 1721 of S. 1722 providing coverage for pharmacy robberies in very limited circumstances is supported by the Department of Justice only in the sense that the Department has been and continues to be in strong support of S. 1722. As we have frequently stated, that support should not be read to indicate that we would support each of the items in that bill. Rather, in balance, we perceive S. 1722 as providing significant improvements over current Federal criminal law.

The Department's longstanding opposition to Federal coverage of pharmacy robberies as a separate issue remains unchanged. We do not have the resources to investigate and prosecute such offenses nor do we believe that an adequate case for Federal intervention has been made out. Where the robberies are symptomatic of some other course of conduct, such as drug trafficking or organized crime activity, having a greater Federal interest, there is ample jurisdiction under current law and other provisions of both S. 1722 and H.R. 6915 to provide a basis for Federal intervention.

I regret any misunderstanding or confusion that may have developed from my previous letter and ask you to feel free to call on me if you should wish further clarification.

Sincerely,

PHILIP T. WHITE,
Acting Deputy Assistant Attorney General.

[From Drug Topics, Feb. 15, 1976]

CRIME AGAINST PHARMACY: WHO'S RIGHT—DEA OR NARD?

MAKING THEFT OF CONTROLLED SUBSTANCES A FEDERAL OFFENSE WILL WORSEN PROBLEM, SAYS DEA

If the Drug Enforcement Administration is on the right track, the National Association of Retail Druggists must be dead wrong.

That, in effect, is the DEA pitch, as outlined by the agency at a Boston seminar on crime against pharmacy.

Speaking for DEA, David H. McDougal maintains that, contrary to NARD claims, making theft of controlled substances a Federal offense won't solve the problem. It would only make it worse. For one thing, he says, it would delay prosecution in a Federal court system that's already clogged with backlogged cases and where pharmacy-related crimes are likely to be shuffled down the priority list. Trials could drag on for years. Even successful prosecution won't be much of a deterrent because most criminals consider Federal penitentiaries "country clubs" and prefer them to local jails.

For another, Federal agencies are both understaffed and ill-equipped to do the job, he explains. DEA, for example, has a relatively small staff, which means it could be days before an enforcement officer can be sent out to investigate a crime. Future outlook for Federal help is even grimmer, now that the agency's request for a $1 million fund for a campaign against pharmacy crime has been turned down.

McDougal, who headed an experimental crime prevention program in St. Louis, disputes the belief that addicts are the greatest problem for pharmacies. In St. Louis, he says, addicts were involved in only a few pharmacy-related crimes, and among them no more than 20 percent of those arrested were after both money and drugs—most of them were interested only in money. About a quarter did admit to drug use, mostly to nonaddictive marijuana, with amphetamines ranking second. (McDougal concedes, however, that 45 percent of the crimes involved loss of drugs.)

When a crime against a pharmacy takes place, the local police can act far more swiftly and effectively than any Federal agency, asserts McDougal. Reason: The local police can be on the spot immediately, and, unlike DEA officers who are not trained to handle this type of crime, the police have specialized burglary and robbery squads.

But all that is after the fact. The number of crimes can be made to drop drastically, says McDougal, if pharmacists take all the preventive measures available to them (pharmacy crimes fell 50 percent in the first six months of 1975 in St. Louis when Rx-men followed DEA advice, he claims). Among these precautions are:

Keep on the shelf only as much controlled substance stock as is needed. A thief generally has just three to five minutes to work, during which he can look into only two or three places. One pharmacist foiled burglars by hiding his narcotics stock in a Kotex case.

Stamp your DEA number on controlled substance labels; it would make it easier to link a captured criminal with the theft.

When possible, avoid alphabetical listing of controlled substances, either by the name of the manufacturer or the name of the drug. The thief will be looking under "S" for Seconal or under "L" for Lilly.

Consider an alarm system as a must—not window tapes, though, which, because they can be put out of commission with a fingernail, are of little use. For protecting your most vulnerable areas, pick a silent alarm.

Avoid an electrically-controlled door release for the Rx department—it signals that the pharmacist is alone. And it prevents others from coming in and interrupting the holdup.

Cooperate fully with the holdup man. Assure the man that you're complying fully with his orders, and do everything to hurry him out. Delay him only if certain help is on the way.

[From Drug Store News, Dec. 14, 1981]

D.E.A. WARNS RXMEN OF LIABILITY IN FORGERY

WASHINGTON.—Drug Enforcement Administration officials issued stern warnings to the nation's pharmacists that they will be excepted to participate actively in the agency's war against drug diversion.

Under the Federal Controlled Substances Act, pharmacists are prohibited from "knowingly" filling a forged or bogus prescription for any controlled drug. But according to D.E.A. policy makers, a pharmacist could be charged with a violation even if he only suspects that a prescription is invalid.

"The law does not require a pharmacist to dispense a prescription order of doubtful origin," D.E.A. enforcers said. "To the contrary, the pharmacist who deliberately closes his eyes when he has every reason to believe that the purported prescription order had not been issued for a legitimate medical purpose may find himself prosecuted, along with the issuing physician, for knowingly and intentionally distributing controlled substances, a felony offense which may result in the loss of one's business or profession."

Morever, D.E.A. not only expects, but requires the pharmacist "to exercise his own professional judgment" concerning prescriptions for controlled substances, and if he "has any doubts whatever concerning the legitimacy of a prescription order presented to him, [he] should not dispense it."

FORGERY CHECKLIST

To help pharmacists identify forged prescriptions, D.E.A. has developed the following checklist:

Does the prescription order contain an indication different from the one(s) in the package insert?

Does the prescriber write significantly larger numbers of prescription orders (or in larger quantities) as compared with other physicians in your area?

Does the prescriber write for antagonistic drugs, such as depressants and stimulants, at the same time? (Drug abusers often request perscription orders for "ups and downs" at the same time.)

Do patients appear to be returning too frequently? (In many cases, drug abusers return to the same pharmacy weekly or even daily with prescription orders which should have lasted for a month in legitimate use.)

Do patients appear presenting prescriptions written in the names of other people?

Do a number of people appear simultaneously, or within a short time, all bearing similar prescription orders from the same practitioner?

Are numerous strangers suddenly showing up with prescriptions from the same physician? (Typically, you will find that these individuals are in the 18 to 25 year age group.)

Are your purchases of controlled substances rising dramtically? (If so, look at your prescription counter policies—drug abusers may have found a "vendor" who dispenses prescription orders mechanically, without using professional judgment.)

Any of these "symptoms" could be a signal that drug abusers are tapping your pharmacy for controlled drugs, D.E.A. maintains.

If only one or two prescriptions are involved, "the best remedy may well be a call to the concerned physician," agency officials said. "Often a friendly bit of advice from a fellow professional may be all that is needed to nip a prescribing problem in the bud."

But if "there appears to be a pattern of prescription order abuses," a phone call to the prescriber may not be enough.

"Abusers will simply go elsewhere, possibly to another pharmacist with whom the prescriber has an understanding," D.E.A. warned. "In such cases, the pharmacist should waste no time in contacting the State Board of Pharmacy or the local office of the Drug Enforcement Administration."

APPENDIX V

[From "Drug Abuse: The Pharmacist," the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513) and Its Relationship to the Pharmacist, 93rd Congress, 2d Session, March 28, 1974, pp. 3-99, at 76-78]

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NARD and its members are greatly concerned over the increased risk of crimes of violence in pharmacies. In the August 2, 1973 issue of the Congressional Record, Senator Frank Church—D-Idaho—cited statistics which confirmed that which practicing pharmacists already knew in less specific terms. Crimes of violence in pharmacies related to controlled substances are increasing at an alarming pace. We have with us some individuals who can give you additional information on their own areas. We have provided the committee with many, many new stories concerning similar crimes throughout the country.

Beginning with the hearings on the proposals which became the Controlled Substances Act, NARD has consistently urged that Congress provide Federal jurisdiction to enforce crimes related to controlled substances in pharmacies. Not uncharacteristically, DEA has opposed our pleas for relief and assistance.

As the CSA is effectively implemented to dry up the illicit sources of controlled substances for pushers and users, there is a correspondingly increased pressure and threat upon legitimate outlets possessing quantities of these substances. Pharmacies are a primary target for those in need of drugs for a number of reasons, not the least of which is that pharmacies are open and accessible to just about every segment of the population, and are found in inner city areas when most other businesses have fled.

We do not suggest that ordinary crimes in pharmacies, like robbery and burglary, be blanketed into Federal jurisdiction. However, we do request that crimes of violence—assault, robbery, burglary, murder, and the like—involving controlled substances be subject to Federal jurisdiction. If a pharmacy were robbed and only money taken, that crime would rightly be a matter of local jurisdiction. However, if the felons clearly were motivated by the presence of, or need to obtain, controlled drugs, evidenced by drugs being part of the booty, then we believe that Federal jurisdiction and prosecution ought to be authorized.

Congress has specifically provided that a person who manufactures, distributes, dispenses, or possesses a controlled substance with intent to distribute, is subject to Federal criminal prosecution and penalties under section 401 of the act—21 USCA 841. Similarly, if a person knowingly or intentionally acquires or obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge, Section 403 of the act—21 USCA 843—provides Federal jurisdiction and penalties. However, if the person obtains the drugs by violence in a pharmacy, the act implies that this is of no Federal concern.

It is appropriate and necessary to simply amend the penalties sections to make it unlawful for any person to obtain, or attempt to obtain, any controlled substance through violent or other unlawful means. The increased threat of violence and crimes in pharmacies is a direct result of the stringent controls imposed by the CSA. It is only fitting that the resources and facilities of the Federal Government be made available to protect pharmacies and apprehend those bent on circumventing the controls of the law.

Federal criminal jurisdiction over crimes of violence and other unlawful conduct relating to controlled substances would provide for more uniform law enforcement action and punishment of violators. As it is now, punishment of drug-related crimes in pharmacies rests upon the varying provisions of State criminal laws. A Federal law would provide a sanction universally applicable in this country that would be more readily understood and heeded and more uniformly applied.

Pharmacists have become the men on the frontiers of the movement to curb and eliminate drug abuse. Our members are health care professionals, not policemen, nor experts in the art of self-defense. However, the focus of criminal activity relating to controlled substances is gravitating to the thousands of pharmacies in this country. Through no fault of their own, pharmacists have been placed in a situation where their lives and property are continually at risk.

NARD believes that pharmacists ought to be supported as they make the sacrifices which necessarily accompany this national push to reduce drug misuse and abuse. We would request that the Congress consider some form of insurance, either without cost or at nominal cost, to cover the costs of the potential tragedy and risks that they face. In this manner, at least those pharmacists who were injured, or disabled, by violence associated with controlled substances, or families of pharmacists killed, would be made financially whole.

Unless some method of assuring pharmacists of greater protection from and involvement of Federal law enforcement machinery and personnel, NARD believes that pharmacists will begin to refuse to stock or handle controlled substances altogether. Such action would have serious detrimental effects on health care which none of us would welcome but there is a limit which society, just in humanistic terms, cannot expect pharmacists to exceed.

The overwhelming percentage of pharmacists in this country practice in independent community pharmacies. Too often our members feel that their needs, suggestions, and requests are ignored or viewed with hostility by those administering the law. The Federal Government has shown little sensitivity or understanding of the very real problems or risks our members face. The Federal effort is apparently paying good dividends in the area of illicit and clandestine operations involving criminal elements but appear ill-equipped to deal with legitimate health care providers, the vast majority of whom are law-abiding citizens. Enforcement personnel, innately suspicious and cynical, accustomed to the challenges of criminal activity, seem to carry these attitudes and perspectives into their regulatory sphere as well.

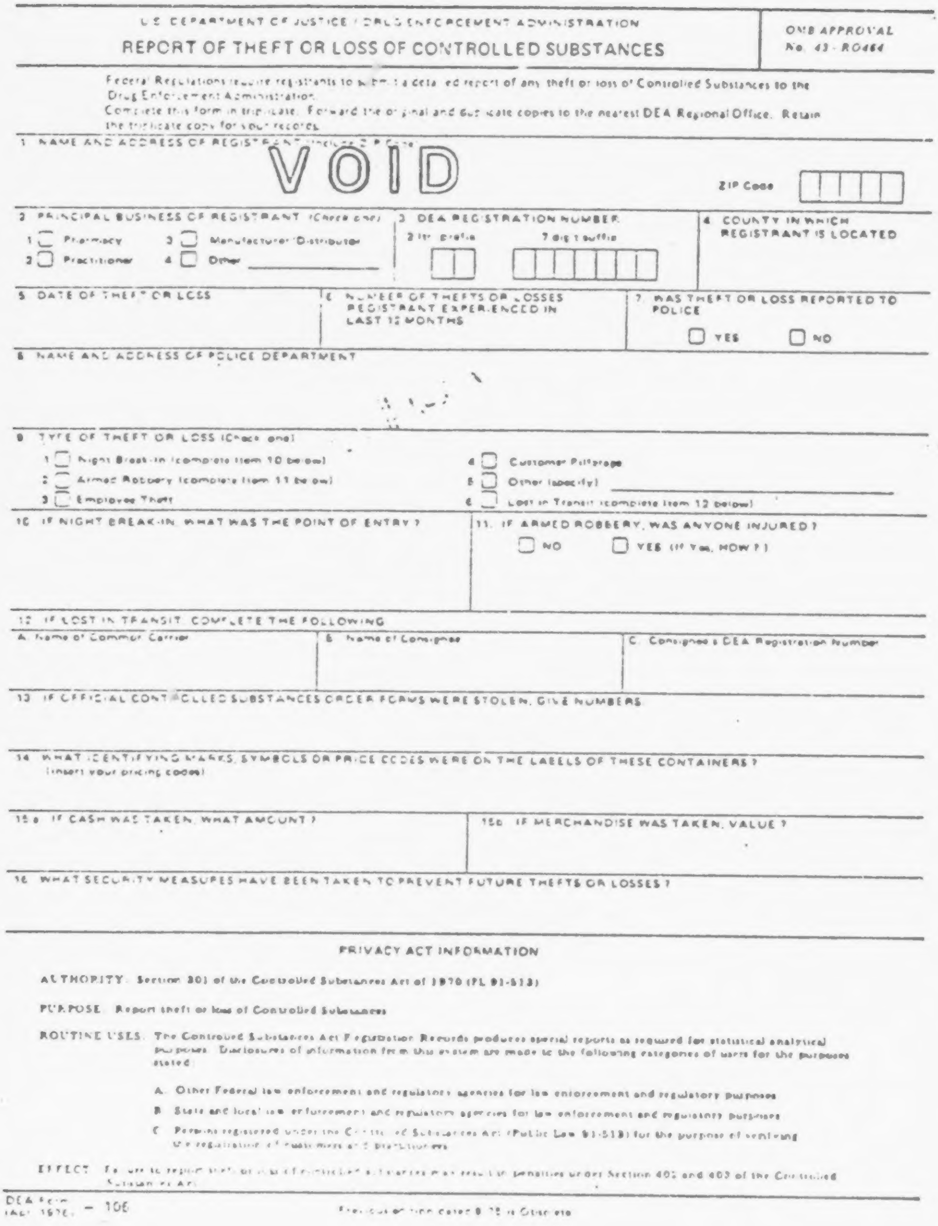
When NARD suggested that mail-order outfits might be a significant source of controlled drug diversion, BNDD—now DEA—retaliated with a study of 16 pharmacies which superficially proved the converse. The report contained apparent violations, but we and State pharmacy boards were denied access to the specifics of the study, including the names of the outlets surveyed, or even the identity of the violators. We were also denied access to the data before the agency in selecting the sample of pharmacies. Obviously, if the pharmacies surveyed were those for which complaints had been made or for which the Government had reason to believe were less than diligent in complying with the law, the results would naturally be misleading.

NARD has proceeded on the assumption that our goals and those of the Governmental agency administering the law in the area of regulating the legitimate health care system should be complimentary, a cooperative rather than an adversary effort. For our part, we have sought to assure that the legitimate channels of distribution, and pharmacies in particular, are regulated as efficiently as possible in a manner that removes to the extent possible, actual, or potential opportunities for drug diversion and deserve further consideration.

We believe that DEA has sufficient information available to it to identify pharmacists or physicians who may be improperly contributing to traffic and abuse of controlled drugs. Pharmacy suppliers must maintain records for inspection. Where these records show unusual activity, the pharmacy or pharmacies concerned have records showing the names of prescribers which must be maintained. An audit of the pharmacy records should show readily whether the abnormal activity is caused by the pharmacist or by one or more prescribers in that community. * * *

APPENDIX VI

DEA - Form 106



U.S. DEPARTMENT OF JUSTICE / DRUG ENFORCEMENT ADMINISTRATION

REPORT OF THEFT OR LOSS OF CONTROLLED SUBSTANCES

OMB APPROVAL
No. 43 - R0464

Federal Regulations require registrants to submit a detailed report of any theft or loss of Controlled Substances to the Drug Enforcement Administration.
Complete this form in triplicate. Forward the original and duplicate copies to the nearest DEA Regional Office. Retain the triplicate copy for your records.

1 NAME AND ADDRESS OF REGISTRANT (Include ZIP Code)

VOID

ZIP Code ☐☐☐☐☐

2 PRINCIPAL BUSINESS OF REGISTRANT (Check one)
1 ☐ Pharmacy
2 ☐ Practitioner
3 ☐ Manufacturer/Distributor
4 ☐ Other ______

3 DEA REGISTRATION NUMBER
2 ltr. prefix ☐☐
7 digit suffix ☐☐☐☐☐☐☐

4 COUNTY IN WHICH REGISTRANT IS LOCATED

5 DATE OF THEFT OR LOSS

6 NUMBER OF THEFTS OR LOSSES REGISTRANT EXPERIENCED IN LAST 12 MONTHS

7 WAS THEFT OR LOSS REPORTED TO POLICE
☐ YES ☐ NO

8 NAME AND ADDRESS OF POLICE DEPARTMENT

9 TYPE OF THEFT OR LOSS (Check one)
1 ☐ Night Break-in (complete item 10 below)
2 ☐ Armed Robbery (complete item 11 below)
3 ☐ Employee Theft
4 ☐ Customer Pilferage
5 ☐ Other (specify) ______
6 ☐ Lost in Transit (complete item 12 below)

10 IF NIGHT BREAK-IN, WHAT WAS THE POINT OF ENTRY?

11. IF ARMED ROBBERY, WAS ANYONE INJURED?
☐ NO ☐ YES (If Yes, HOW?)

12 IF LOST IN TRANSIT, COMPLETE THE FOLLOWING

A. Name of Common Carrier

B. Name of Consignee

C. Consignee's DEA Registration Number

13 IF OFFICIAL CONTROLLED SUBSTANCES ORDER FORMS WERE STOLEN, GIVE NUMBERS

14 WHAT IDENTIFYING MARKS, SYMBOLS OR PRICE CODES WERE ON THE LABELS OF THESE CONTAINERS?
(Insert your pricing codes)

15a IF CASH WAS TAKEN, WHAT AMOUNT?

15b IF MERCHANDISE WAS TAKEN, VALUE?

16 WHAT SECURITY MEASURES HAVE BEEN TAKEN TO PREVENT FUTURE THEFTS OR LOSSES?

PRIVACY ACT INFORMATION

AUTHORITY: Section 301 of the Controlled Substances Act of 1970 (PL 91-513)

PURPOSE: Report theft or loss of Controlled Substances

ROUTINE USES: The Controlled Substances Act Registration Records produces special reports as required for statistical analytical purposes. Disclosures of information from this system are made to the following categories of users for the purposes stated:

A. Other Federal law enforcement and regulatory agencies for law enforcement and regulatory purposes
B. State and local law enforcement and regulatory agencies for law enforcement and regulatory purposes
C. Persons registered under the Controlled Substances Act (Public Law 91-513) for the purpose of verifying the registration of [illegible]

EFFECT: Failure to report theft or loss of controlled substances may result in penalties under Section 402 and 403 of the Controlled Substances Act.

DEA Form
(Apr. 1976) - 106

Previous edition dated 8-75 is Obsolete

DEA - Form 106 (backside)

LIST OF CONTROLLED SUBSTANCES LOST

	NAME OF SUBSTANCE OR PREPARATION (Include Trade Name)	NAME OF CONTROLLED SUBSTANCE IN PREP	DOSAGE FORM AND STRENGTH	QUANTITY	TOTAL NET WT. (Gms) OF CONTROLLED INGREDIENT
EX	EMPIRIN # 3	CODEINE	½ GR TAB	100	3.200
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
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VOID

FOR DEA REGIONAL USE ONLY	GRAMS
AMPHETAMINES	
BARBITURATES	
COCAINE	
CODEINE	
DIHYDROCODEINONE	
DILAUDID	
METHADONE	
METHAMPHETAMINE	
MORPHINE	
NUMORPHAN	
OPIUM	
OXYCODONE	
PETHIDINE	
OTHERS (List)	

I certify that the foregoing information is correct to the best of my knowledge and belief.

Signature ______________________

Title ______________________

Date ______________________

BEST COPY AVAILABLE

APPENDIX VII

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., January 16, 1981.

WILLIAM E. WOODS,
Executive Vice President, the National Association of Retail Druggists, Washington, D.C.

DEAR MR. WOODS: Thank you for your thoughtful letter enclosing a copy of the National Association of Retail Druggists' recent policy statement supporting Federal criminal sanctions against pharmacy thefts. I certainly understand the concern of your organization that such acts of violence be made a Federal crime.

As you are no doubt aware, the U.S. Drug Enforcement Administration (DEA) has testified on numerous occasions opposing expanding Federal law enforcement jurisdiction to include pharmacy thefts. In hearings last year before the Subcommittee on Health and the Environment, I requested DEA respond to a number of questions relating to the likely effect of such an expansion. DEA reiterated their opposition to this proposal and stated that making pharmacy thefts a Federal crime would not have a significant deterrent effect. Knowing of your interest, I am enclosing a complete copy of DEA's response to this inquiry and welcome your comments.

Despite the DEA's public position, I believe the Federal government should play a more aggressive role in deterring pharmacy thefts and other criminal acts which contribute to the diversion of controlled substances from licits channels. While I am not convinced further expansion in Federal enforcement jurisdiciton is appropriate at this time, Federal agencies should work closely with local law enforcement officials in sharing intelligence information, coordinating enforcement activities and encouraging development of more effective theft control program.

Again, thank you for your letter. If I can be of assistance to you in the future do not hesitate to write.

With every good wish, I am,
Sincerely,

HENRY A. WAXMAN,
Chairman, Subcommittee on Health and the Environment.

Enclosure.

The attached monograph, distributed by the Interagency Committee on New Therapies for Pain and Discomfort describes the mechanisms available to the researcher in order to comply with the FDA regulations. The Committee, whose function in part is to facilitate research of the therapeutic qualities of Schedule I drugs, is currently chaired by Diane J. Fink, M.D., Associate Director for Medical Applications of Cancer Research, National Cancer Institute. (See Attachment VIII)

31. It has been suggested that pharmacy thefts be made a Federal crime. Would you endorse such a proposal? Is is likely such a revision in the criminal statute would have a deterrent effect on pharmacy burglaries and robberies? Does DEA have the capability to effectively enforce such a law? If not, what additional resources would be necessary to fully administer such a provision?

The Drug Enforcement Administration opposes efforts to make pharmacy theft a Federal crime for the following reasons:

A. Making pharmacy thefts a Federal crime will not have any effect on this problem. Bank robberies are Federal crimes, however, this type of crime increased by 25 percent in 1979. Total figures are not yet available, however, DEA forecasts an increase of pharmacy thefts of around 10 percent in 1979, except in Pharmacy Theft Prevention (PTP) cities, where a prevention program is actively underway.

B. Local police departments are best equipped to respond to this type of crime. Every known enforcement statistic indicates that successful burglary/holdup arrests are directly related to the time it takes to respond to the initial alarm. The Los Angeles Police Department studied this problem and discovered the following correlations between response time and apprehension rates. See below:

Response Time	Apprehension Rate
30 sec. or less	100%
1 minute	90%
2 minutes	75%
4 minutes	50%
10 minutes	20%

C. The DEA has approximately 200 Compliance Investigators who are responsible for investigating instances of diversion from all legitimate sources. There are around 55,000 retail pharmacies registered with DEA. These investigators cannot possibly investigate the seven to eight thousand annual pharmacy thefts reported by these pharmacies.

D. In most instances pharmacy theft cases will not have appropriate level violators for DEA and will not be accepted for Federal prosecution. Federal court calendars are already crowded. Moreover, since the passage of the Speedy Trial Act, Federal prosecutors are even more selective in accepting cases for prosecution.

E. There is no evidence that pharmacy theft defendants receive stiffer penalties in Federal court than in State court.

F. Making pharmacy thefts a Federal crime may actually harm pharmacists by giving them a false sense of security.

32. Please provide a detailed description of the programs and activities sponsored during FY 1980 and FY 1981 to assist states and localities in controlling pharmacy thefts. Include specific manpower and financial allocations?

DEA provides no direct financial assistance to Pharmacy Theft Prevention (PTP) cities. However, DEA field personnel provide substantial technical assistance to communities which desire to initiate these programs. Field representatives organize groups in interested cities and provided executive committees with information regarding the nature of pharmacy crimes. DEA personnel assist in presentations and provide initiatives for activities which have been successful in other PTP cities. Additionally, DEA has prepared PTP publications and encourages the preparation of additional private publications.

There are currently 12 PTP cities with active Pharmacy Theft Prevention programs. In 1979, four PTP programs were disbanded. Pharmacy representatives in these cities either lost interest or felt that the programs had accomplished their objectives. Two additional programs are underway and will be operational in 1980.

PTP Cities

Active	Developing	Disbanded
Philadelphia, PA	Louisville, KY	Waterbury, CN
Milwaukee, WS	Pittsburgh, PA	Buffalo, NY
Nashville, TN		Miami, FL
Johnson County, KS		Cleveland, OH
Dallas, TX		
Denver, CO		
Seattle, WS		
San Diego, CA		
Rhode Island State		
Clark County, NV		
Utah State		
San Juan, PR		

Additional funding and manpower could improve the scope and quality of coverage.

To date, funding has not been a significant problem. The DEA widely distributes information regarding this program through the Voluntary Compliance Program and pharmacy working committees. However, only a limited number of communities have come to DEA and requested assistance.

DEA's Pharmacy Theft Prevention programs are developing in many areas. Some programs are establishing "hot lines" to deal with forged and xeroxed prescriptions. Other programs are considering actions for state legislation such as mandatory sentences and triplicate prescriptions. The direction of the program is limited only by the nature of the problem in the locality and the imagination of the participants.

DEA has applied for, and received, a $50,000 grant from the Law Enforcement Assistance Administration (LEAA) for the purpose of assisting pharmacists who are victims of pharmacy theft by producing a professional film to educate pharmacists in prevention and protection techniques in the event of an armed robbery. It is anticipated copies of the film will be distributed to all PTP cities and State Boards of Pharmacy. (See question 15)

33. Please provide a detailed chart illustrating the experiences of cities in the Pharmacy Theft Prevention (PTP) program. The chart should include comparison of pharmacy thefts since FY 1977 to the present.

Pharmacy Thefts: PTP Cities

	June-Dec 1977	Jan-June 1978	June-Dec 1978	Jan-June 1979	
Waterbury	7	2	2	2	- 71.4%
Buffalo	23	12	16	30	+ 30.4%
Philadelphia	33	28	11	14	- 57.6%
Miami	44	30	22	57	+ 29.5%
Cleveland	36	18	13	11	- 69.4%
Milwaukee	7	6	4	6	- 14.2%
Nashville	10	24	41	52	+ 420.0%
Johnson Co., KS	5	2	6	5	-0-
Dallas	13	26	40	20	+ 53.8%
Denver	31	31	22	33	-0-
Seattle	33	3	4	2	-155.0%
San Diego	8	11	12	16	+100.0%
Total	250	193	193	248	-0.8%
Nationally	3,677	4,175	3,429	4,150	+12.8%

34. What are the nationwide statistics on the number of pharmacy thefts during 1978 and 1979? In providing data for each year, please distinguish between burglaries and armed robberies. If possible, please include figures on the number of dosage units diverted.

Pharmacy Thefts: National Statistics v. PTP Statistics

National Statistics	PTP Cities
1st half of 1978	1st half of 1978
Total thefts - 4,175	Not available
64.1% Night break-in	
17.2% Armed Robbery	
18.6% Other	
2nd half of 1978	2nd half of 1978
Total thefts - 3,429	Total thefts - 228
61.4% Night Break-in	38.4% Night Break-in
18.4% Armed Robbery	46.9% Armed Robbery
20.2% Other	14.9% Other
1st half of 179	1st half of 1979
Total thefts - 4,150	Total thefts - 308
55.9% Night Break-in	45.8% Night Break-in
23.5% Armed Robbery	34.1% Armed Robbery
20.6% Other	20.1% Other (See Attachment IX)

35. Could retail pharmacies do more to protect themselves through modest improvements in better security systems?

This is a major thrust of the PTP program--"prevention." Security is the answer, of course. Increases in security undoubtedly result in reduced theft. Thefts at the wholesaler and manufacturer level are infrequent, however, these firms are required by law to provide substantial drug security.

Pharmacists cannot afford to install large amounts of security, however, modest improvement can result in decreased vulnerability. The store should have adequate lighting and all merchandise should be cleared to allow a clear view of the pharmacy counter. Potential sites for entry should be scrutinized. Doors or locks may be upgraded. Many burglars enter through the roof. This should be considered. Silent alarm systems are expensive, but effective. High volume stores should consider using them. Local alarms also act as a deterrent. Each pharmacist should be encouraged to actually evaluate his store's security. Vulnerable points should be identified and, where possible, upgraded. Additionally, pharmacies should stock minimal levels of controlled substances necessary to supply customer needs, and should work with local police to establish close relationships and solicit their active assistance in prevention programs.

The DEA continues to review information regarding drug security for pharmacists. Useful and pertinent ideas are passed on through the Voluntary Compliance Program, PTP field liaison and pharmacy working committees.

36. Since 1976, the United States has experienced a decrease in heroin supplies. Is there any evidence to suggest that a shortage of heroin increases demand for other dangerous drugs? Is so, please explain.

All information available consistently points to a marked rise in the use of drugs other than heroin, with notable increases having been seen in the cocaine, hallucinogen, stimulant, and cannabis categories. These increases are clearly indicated in the chart below which stratifies the average number of injuries per quarter for each of these drugs over a four year period.

Average Injuries Per Quarter

Drug Area	1976	1977	1978	1979 (9 mos.)	% Change 1976-1979
Heroin	4,780	3,075	2,373	1,779	-63%
Cocaine	311	397	479	561	+80%
Cannabis	700	972	1,211	1,229	+76%
Hallucinogens	785	1,249	2,362	2,441	+211%
Stimulants	1,449	1,624	1,671	1,712	+18%

Current data also shows that in the last few years, as heroin has become less available, heroin addicts have increasingly turned to other drugs as supplements to, and substitutes for, poor quality heroin. For example, the number of mentions* of the heroin analogs Dilaudid and Talwin have risen substantially.

For 1976 through mid-1979 Dilaudid mentions have risen by 70 percent and Talwin mentions have increased by 71 percent. Also, pharmacy thefts have increased 36 percent since 1976, and armed robberies of pharmacies have risen by over 60 percent since 1977.

One of the clearest pieces of data showing that heroin substitution and supplementation has been more prominent comes from Federally funded treatment center (CODAP) statistics. In the last three and one half years, growing proportions of heroin users have indicated use of secondary drugs with heroin. In 1976, only 29 percent of heroin users indicated secondary drug use. In the first six months of 1979, the percentage had grown to 53 percent.

It is important to recognize, however, that the practice of heroin substitution/supplementation on the part of heroin users is not a phenomenon unique to the current shortage. Studies and surveys on addict behavior prior to 1976 have continually shown that use of other drugs in combination with or in place of heroin is common and that the practice becomes frequent during times of heroin shortage.

37. In FY 1980 and FY 1981 what do you see as the most significant challenge confronting the agency?

During the next several years, DEA will face many challenges to our efforts to control drug trafficking. There are three serious sources of drugs of abuse: Southwest Asian heroin, Colombian marihuana and cocaine, and the retail diversion of legitimate drugs from the retail level. Each of these threats will be difficult to meet because: (1) resource constraints on DEA will not permit an increase in enforcement personnel during the next two years, (2) current U.S. Government policy does not support herbicidal spraying of marihuana, (3) State and local governments either are not resolved or not prepared to address the retail diversion problem on a large scale, and (4) enforcement successes are not adequately supported by uniform sentencing appropriate to the egregiousness of the crimes.

Southwest Asian Heroin Situation. The United States has enjoyed a tremendous reduction in the heroin problem, largely due to the opium eradication efforts in Mexico. Opium produced this year in the Southwest Asian countries of Iran, Pakistan and Afghanistan is likely to be 100 times that produced in Mexico. Western Europe is already experiencing an alarming

*Injury incidents reported in hospital emergency rooms.

National Association of Retail Druggists,
Washington, D.C., March 23, 1981.

Mr. Henry A. Waxman,
Chairman, Subcommittee on Health and the Environment, Energy and Commerce Committee, Rayburn House Office Building, Washington, D.C.

Dear Chairman Waxman: We were especially pleased to learn in your recent letter that you are convinced that the Drug Enforcement Administration should do more to curb pharmacy thefts. On the other hand, we are concerned that you are not yet convinced that robbery to obtain a Federally controlled drug should be a Federal offense. We have carefully reviewed the DEA response submitted to your Subcommittee last year and welcome your suggestion that we comment on the agency's written response to your questions on pharmacy theft.

It is important to note at the outset that your questions referred to "pharmacy theft". DEA claims that making pharmacy thefts a Federal crime would have no effect on curbing the problem. To ostensibly support such a questionable assertion, DEA cites bank robbery figures for fiscal year 1979 and pharmacy theft figures for the same year. Thus, they compare apples (theft) to oranges (robberies). The reality is that while bank robberies were up 25 percent that particular year, according to DEA's own figures, pharmacy robberies were up 33 percent for the same year. A comparison of the trend is even more revealing. According to the September 1980 FBI Uniform Crime Report, bank robberies rose 51 percent between 1975 and 1979. However, according to DEA figures, the robberies of pharmacies from 1976 to 1979 increased 105 percent, with a 70 percent increase in just two years from 1977 to 1979. Of course, the DEA records are less complete than the Uniform Crime Report and tell only part of the story. The NARD Pharmacy Protection and Violent Offender Act of 1981 would help fill this information gap by requiring that pharmacy crimes, including robbery, be added to the Uniform Crime Report. This NARD provision has already been introduced in the 97th Congress in both the Senate and the House.

It is curious that the DEA response forecasts a rate of pharmacy theft increase of 10 percent in areas other than cities with Pharmacy Theft Protection (PTP) programs. Arguably, the PTP has had a positive impact and the DEA response to your question (#34) seems to support this conclusion. Other possibilities, however, are raised regarding the target of the NARD legislation: robberies. According to the figures provided the Subcommittee (#34), PTP cities' armed robbery rate, as a percent of total pharmacy thefts, are significantly higher than the national average. Several explanations are possible to explain why PTP cities have experienced an increase in the number of robberies to obtain Federally controlled drugs. One explanation, however, seems far more compelling than others. In 1969 we cautioned the Congress that with the enactment of the 1970 Controlled Substances Act and the predicted reduction in illicit drug traffic, the pharmacies of America would become the favored target. We told the Ways and Means Committee, as well as this Subcommittee, that "we are concerned that the robberies, assaults, and senseless murders in retail pharmacies may increase."

Pharmacists, their staff and customers, however, were left unprotected by the 1970 Act. They would have to wait. It appeared that the Congress wanted or needed a pharmacy body count similar to the list of narcotic overdoses that, in part, stimulated action on the 1970 Act. From the outset, however, the very agency within the Department of Justice which had been given responsibility for the 1970 law, the BNDD (now DEA), adamantly opposed the NARD legislation. In fact DEA opposition to the legislation became the single most important obstacle to passage of the Pharmacy Crime Bill.

Friend and foe alike cited the DEA opposition as a major stumbling block to progress.

Unrelentingly, NARD took its case again and again to the Congress.

Each subsequent year NARD legislation was introduced with predictable opposition.

NARD's 1969 prediction that as illicit demands of drug supply were cut off retail pharmacists would become targets for an increased number of criminals seeking other sources of drugs has regrettably become a reality. Now these daytime robberies for controlled substances act drugs are even spreading to hospital pharmacies.

In cautioning that failure to act in 1970 would return to haunt, NARD forecasted the grim, growing epidemic of terror and violence which has engulfed our nation's retail pharmacies, their owners, staff, families and customers.

Each year the National Association of Retail Druggists has adopted a policy statement regarding pharmacy crime. The following text unanimously adopted at our 87th Annual Convention in Atlanta, Georgia, October 2, 1980, succinctly states our members' recommendation, and that of other pharmacists, as to why there is a problem and what can be done to remedy it:

"That, robbery of controlled substances from pharmacies be made a Federal offense.

"Since enactment of the Controlled Substances Act of 1970, NARD has pressed for legislation making robbery of drugstores for CSA drugs a Federal offense. The Drug Enforcement Administration has required that pharmacists place bars on windows, secure skylights and bar back doors, as well as installation of security systems. Because of the DEA activities and success in drying up illicit sources of drugs, pharmacists are left as sitting ducks for criminals seeking drugs."

Thus, since passage of the Controlled Substances Act, criminal who in the past relied upon access to illegal drugs or who relied upon nighttime break-ins, have on an ever increasing basis been entering in the daytime, through the front door, usually armed with a dangerous weapon.

The DEA statistics on the PTP programs bear out our long held contention that successful enforcement of current provisions of the 1970 Act, designed to reduce forms of diversion *other than robbery*, have increased both the street value of the drugs sought and the likelihood of robbery as the more preferred method for obtaining these controlled substances. While robbery of pharmacies increases as a percent of total pharmacy crime between CY 1976 and CY 1979, DEA reports that nighttime break-ins or burglaries substantially declined from 71 percent of total pharmacy thefts to 56 percent. Likewise the same phenomenon is revealed with trends in the volume of dosage units stolen or analyzed. Total dosage units stolen from pharmacies from CY 1976 to CY 1979 have increased from 30,242,432 to 31,869,323. However, the amounts obtained by nighttime break-ins have actually declined while dosage units obtained by robbery during the same period of time have increased nearly 100 percent.

A corollary to DEA's unenthusiastic response to the robbery of pharmacies is the manner in which the agency understates the impact of such crimes. If, for example, an armed assailant entered an independent retail pharmacy owned by one of our members, harassed and abused the staff and customers and left with 282 tablets of dilaudid, never to be heard of again, DEA would record the robbery and assess its importance on the basis of the replacement cost of the drug stolen or approximately $30.00. On the other hand, if the armed robber, one block away, was confronted by a DEA agent and arrested for illegal possession of the controlled substance, the agency would catalog such a case as one involving drugs with a street value in excess of $11,000. If DEA characterized such crimes on a par with its "street busts", clearly pharmacy thefts reported to DEA could have an estimated street value well over $125 million!

DEA claims (#31) that it could not possibly investigate the 7-8,000 annual pharmacy thefts. Actually the subject of NARD legislation, robbery, accounts for somewhere between 18 and 24 percent of such total thefts annually, except in PTP cities where robbery as a percentage of total pharmacy thefts, increased, as previously noted, and in fact is approaching the 50 percent mark.

Once the NARD bill is enacted, we would expect DEA to pursue such robbery violations with at least the same enthusiasm that the agency has demonstrated regarding other violations of the Act. For example, the attached "A Study of Federal Arrests and Dispositions of Practitioners: 1972-1977," reviews past efforts of DEA directed at medical practitioners, including doctors of medicine, doctors of osteopathy, veterinarians, dentists and podiatrists. Seventy-seven percent of these cases resulted in conviction and the majority received a prison term, with a median term of 36 months. Personnel and other costs of this and related efforts are not available to us, but we would hope that at least comparable persons and dollars would be made available to deter those intent upon robbing pharmacies.

In fact, perhaps because of the violent nature of the target of NARD's legislation, even greater effort would be appropriate.

Certainly not every conceivable case would be exclusively handled by the Department. The NARD legislation would provide concurrent jurisdiction and in no way would it preempt the appropriate and necessary effort by state and local authorities.

The agency cites (#31) the already crowded Federal dockets as an additional basis against making such robbery Federal crimes. While we are likewise aware of the growing number of criminal matters pending in Federal courts, the NARD legislation would require that all robbery cases be handled on an expedited basis.

In further response, DEA claims (#31) that defendants do not necessarily receive stiffer sentences in the Federal system than in the state systems. Whether that is the case or not is not addressed by the NARD bill. What is included, however, is a mandatory minimum penalty for such robberies without the possibility of probation or suspended sentences. Thus, in every case, the sentence imposed would be an appropriately severe one. Additionally, stiffer penalties would be required when such robberies involved assault or use of dangerous weapons and especially in any case in which death or serious harm resulted during the robbery. The NARD bill, therefore, would provide a uniform, truly deterrent response in each of the states to robbery to obtain Federally controlled drugs.

Lastly, the agency states (#31) that "local police departments are best equipped to respond to this type of crime." However, when asked in a subsequent question (#37) to set out the most significant challenges confronting the agency in fiscal year 1981, DEA took a different approach. The agency pointed out that the diversion of legitimate drugs from the retail level is one of three major sources of drugs of abuse. The other two sources were Southwest Asian heroin and Colombian marijuana and cocaine. DEA then reviewed four major difficulties in attacking these sources of drug abuse. They stated that "state and local governments here are not resolved or not prepared to address the retail diversion problem on a large scale." NARD has never questioned the resolve of local law enforcement in such matters. However, it does agree that because of the unique Federal imprint on such crimes and their national scope, state and local efforts should be supplemented in order to help reduce retail diversion.

As noted above, robbery is increasing in raw numbers, as a percent of total retail diversion and in terms of total dosage volume diverted at the retail level. Our members need all the law enforcement support they can get.

Under NARD legislation, we envision our members working closely with local, state and Federal authorities to maintain a coordinated attack on pharmacy robbery which will hopefully have success comparable to that associated with PTP cities and the impact on non-robbery pharmacy theft.

DEA also claims (#37) that another obstacle to controlling the abuse of legitimate drugs obtained by retail diversion is that "enforcement successes are not adequately supported by uniform sentencing appropriate to the egregiousness of the crimes."

NARD concurs wholeheartedly in this view, espcially in the case of the robbery of the pharmacies. The mandatory sentencing scheme set out in our legislation will help guarantee uniform sentencing for comparable crimes in all states. Likewise, the NARD legislation, with its special provisions for repeaters, those who use violence and those who inflict fatal or near fatal violence, will assure that the sentences imposed are appropriate to the violent nature of the crimes.

It would appear that the DEA and NARD are actually not far apart in their view of the problem. Likewise, we are encouraged that since your hesitancy on the pharmacy crime legislation has been based in part on their espoused position, generally on pharmacy thefts not specifically robberies, there appears to be many bases for cooperation and mutual efforts to curb these robberies. Additionally, it now appears that the DEA has substantially changed its long held opposition to Federal legislation on pharmacy robberies. Although the specifics of the agency's new approach are still not available, this is indeed a welcomed change. This development as well as the progress made in the 96th Congress underscores the opportunity ahead. Unlike the past ten sessions, it appears that the 97th Congress will have the opportunity to vote to protect pharmacies, their owners, staffs and customers from those who violently seek to obtain Federally controlled drugs.

We urge you to support the NARD Pharmacy Protection and Violent Offender Act of 1981 and to hold hearings on it and other measures designed to advance its objectives.

We, the Officers, Executive Committee and staff of NARD, renew our pledge to work with you, your Subcommittee and staff to assist in this effort.

Sincerely,

William E. Woods,
Executive Vice President.

Enclosures.

APPENDIX VIII

A Study of Federal Arrests and Dispositions of Practitioners: 1972 - 1977

United States Department of Justice
Drug Enforcement Administration
Office of Compliance & Regulatory Affairs
Kenneth A. Durrin, Director
Regulatory Support Division
Alfred A. Russell, Chief

by William I. Barton, M.A.

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Synopsis

From January 1972 - November 21, 1977 around 129 medical practitioners had been prosecuted by the Federal Government for violations of Title 21 United States Code Sections 801-966, which is the codification of Title II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 - Public Law 91-513, along with its implementing regulations Title 21 Code of Federal Regulations, Part 1300 to End. The term "medical practitioner" includes doctors of medicine, doctors of osteopathy, veterinarians, dentists, and podiatrists. Of this group doctors of medicine accounted for 78%.

The primary violation of law which these medical practitioners were charged with was "delivery of drugs" which, more often than not, refers to the fact that they were administering, dispensing, distributing, and prescribing drugs outside of the course of medical practice. The median age of these 129 medical practitioners was 50. The majority of them were white. The primary drug involved was stimulants. Following arrest, around 9 out of 10 of the medical practitioners were released pending trial.

In terms of "first disposition" which refers to first judicial outcome (e.g., declination, dismissal, acquittal, or conviction) and does not consider appeal, there was a 77% conviction rate. The majority of practitioners who were convicted received a prison term - with the median term being 36 months. Information was not available to develop specific conclusions about cases in which appeals were filed.

A Study of Federal Arrests and Dispositions of Practitioners: 1972-77

After graduating from college, it takes another 3-4 years of study before one becomes a physician. Most States require a 1-year internship or residency beyond that. Physicians who specialize must spend still more years in residency and pass a specialty board examination. In return for their years of study, however, medical practitioners have relatively high average annual earnings. In 1974, for example, physicians had the highest average annual earnings of any occupational group averaging about $50,000 according to information available. Other practitioners, (e.g., osteopathic physicians, podiatrists, veterinarians, and chiropractors) also earn relatively high incomes on the whole.

Because medical practitioners are entrusted with healing the sick and injured, society has granted to them certain privileges not granted to most others. These privileges pertain to the opportunity to administer, dispense, distribute, and cause to be distributed, controlled substances. Members of the public would like to assume that, in being entrusted with these privileges, practitioners use them in accordance with standards set by the medical profession, and/or in professional practice or research. Yet for an unknown and estimated to be relatively small number of practitioners, the acts of administering, dispensing, distributing, or causing to be dispensed (prescribing) become less of a means to an end (i.e., cure), and more of an end in itself. It is no longer a cure that is sought, but rather the contribution to an illness -- in exchange for profit or favors. The medical practitioner thereupon no longer is known as *healer*, but rather as *initiator* or *perpetuator* (of an illness). The occupation moves from one which is licit in nature to one which is more or less illicit.

It is the certification and licensure granted to medical professionals, and the licensure which comes from the State Regulatory Boards and registration by the Drug Enforcement Administration which permits the administering, distributing, and prescribing of controlled substances. Hiding behind this cloak of licensure, some medical practitioners thereupon become active participants in creating and maintaining drug abuse in American society, to an extent that much of the lay public is unaware.

It is not unusual, for example, for physicians who push drugs to be involved in causing the distribution of 40 - 50,000 dosage units per month or more --- enough to maintain a sizeable population of drug abusers in any specific geographical area except perhaps rather large cities. Three examples of the diversion of drugs caused by medical practitioners are the following:

- *An undercover DEA agent bought 51 prescription orders from a physician — 26 in the office, and 25 more at home. It was estimated that this physician was capable of diverting in excess of 500,000 dosage units of Schedule II substances per month. As a result of the prescribing practices of this physician, numerous pharmacies were calling DEA and complaining about this physician's prescription-writing habits. This physician was very obliging to the undercover agent. He asked him how he would like the prescription orders filled out, and often did not date them.*
- *In another case, it was estimated that the physician saw as many as 500 "patients" per month for script diversion. Diversion was estimated at 150,000 dosage units per month of Desoxyn, Preludin, Dexamyl, Tuinal, Biphetamine, and Quaaludes. The only physical or check-up that was required by this physician was blood pressure and weight. The problem of diversion was so extensive in this area, and so well known by area pharmacies, that often they would refuse to dispense this physician's prescription orders. An undercover agent who purchased prescription orders from this physician made 26 unsuccessful attempts to purchase drugs from area pharmacies.*
- *In some cases, pushing of drugs could be considered a "family" business." For example, in one case, both physician and his wife were involved in pushing drugs that the physician had ordered from drug distributors. In another case, both the wife and the son of a veterinarian, along with the veterinarian, were involved in distributing barbiturates and Quaaludes on the east coast.*

Methodology

The source documents for the statistical information presented in this study are the DEA-202 Arrest Form, and the DEA-210 Disposition Form. The arrest form is completed at the time of arrest, usually by an agent in the field. Basic items of information on this form include: type of violation arrestee is charged with (e.g., sale, possession, conspiracy, etc.); major drug that violator was charged with (e.g., stimulants) ; whether arrestee was released pending trial, and type of release (e.g., personal recognizance alone, personal recognizance with bail/bond, or bail/bond) ; if bail/bond was required, how much and whether it was posted or not; presence of prior criminal record, and type record; and whether arrestee was a drug user or not, and if so, what drug(s) arrestee was using.

The DEA-210 Form is used to report disposition data for every defendant arrested under a DEA investigative file number. The requirements are that the form be submitted within 10 working days after prosecution is declined, after charges are dismissed, after defendant is acquitted, or after defendant is convicted. Basic items of information on this form include: whether prosecution was declined, and if so, reason why; type of indictment; final charges; whether case was dismissed, and reason why; whether defendant was acquitted, or convicted and whether such action took place by jury, court, or plea; whether plea bargaining was involved; whether defendant was a second offender; whether defendant was convicted of the maximum sentence provided by law; and if convicted, the sentence in terms of months, and/or amount of fine levied.

Statistical information was supplemented by a review of all case files and abstraction of important information contained therein.

Even though this study focuses primarily on physicians as "pushers" a small number of medical professionals in other fields (e.g., dentists) have been included due to similarities in training and licensing, and due to the fact that they are granted authority to distribute and prescribe controlled substances by DEA under the same statute. There are also a few cases included in this study in which the medical professional was involved in importing and/or distributing drugs not obtained from legitimate channels (e.g., cocaine or marihuana). In some instances, these persons were also involved in "pushing prescriptions (scripts) or pills."

In this study the term "practitioner" is used in place of the term "medical professional"; however, with 78% of the study population being doctors of medicine (Table 1) by and large it is this group which the study addresses.

TABLE I.
Study Population, and Population of DEA Registrant File

	This Study		DEA Registrant File September 30, 1977	
	Number	*Percent*	*Number*	*Percent*
TOTAL	129	100%	484,000	100%
Doctors of Medicine	101	78%	342,000	71%
Doctors of Osteopathy	11	9%	14,000	3%
Veterinarians	5	4%	22,000	5%
Dentists	9	7%	100,000	21%
Podiatrists	3	2%	6,000	1%

Arrest

Methods of Diversion

There are many methods by which drugs are diverted. This primarily means that drugs are not dispensed in accordance with what would be considered professional practice. Some physicians attempt to use their offices as drug-stores by ordering excessive quantities of drugs from distributors, and then distributing the drugs themselves directly in exchange for the price of an office visit. Some methods of diversion involve practitioners who sign blank prescription orders and leave them at pharmacies so that "patients" can approach the pharmacy directly for their drugs, with the pharmacy collecting the fee for the physician. Some practitioners will date prescription orders for different dates; they will break up large quantities of drugs into a small number of prescription orders; they will write multiple prescription orders for the same drugs, only vary the dosage levels; they will provide prescription orders for the "patient," his mother, girlfriend, and fellow workers without ever seeing them. Practitioners will write prescription orders for their office personnel, and collect the drugs themselves - either for own self-use, or in order to dispense and distribute to "patients." Some practitioners will establish cooperative relationships with certain pharmacies and pharmacists (e.g., in one case the physician actually set up practice in the back of the drug-store; in another case, this type of cooperative relationship resulted in at least 250,000 dosage units of Quaalude being dispensed during a three year period of time to one person).

Practitioners may attempt to insure that "patients" who buy prescription orders get only a thirty-day supply of drugs, and ask that the patient not return for further prescription orders until the end of the period; yet, more often than not, the "patient" returns within the next few weeks, and obtains another prescription order. Some practitioners will attempt to obtain drugs for themselves by only agreeing to write prescription orders for "patients" if the "patients" will split the drugs obtained with the practitioners.

Prescription orders may be written in patient's names, but the patients themselves never receive the drugs. In one case in which the physician was part-head of an organization directly responsible for distributing the majority of cocaine in a city, the physician claimed to be using cocaine and Dilaudid for a terminal cancer patient, even continuing to prescribe these drugs after the patient's death.

Some practitioners may become so attuned to "script pushing" that the whole concept of doctor-patient relationship suffers. For example, some practitioners will see 5-6 "patients" at one time, and ask each "patient" in turn what drugs they want prescription orders for.

A general characteristic of practically all practitioner cases on file where the " pushing of drugs" came from distributing by the practitioner, or through prescribing, is that rarely, if ever, was a physical examination made of the entering patient, and in subsequent visits, practitioners became so accustomed to the "pushing of drugs" per se that even the perfunctory act of taking a blood pressure, and weighing the patient, was rarely carried out.

Motives for Diversion

More often than not, monetary profit was a primary motive for "pushing drugs", along with the fact that "pushing drugs" requires a good deal less exercise of professional expertise than diagnosing and treating; however, there are also cases on record whereby drugs were provided in exchange for receiving stolen property, or for receiving sexual favors. In one case, in exchange for receiving a stolen shotgun, a physician mailed the provider two prescription orders. Next, the physician requested a television from the provider, in exchange for prescription orders. In a five month period, this physician had written for a cooperating informant a total of 11,000 dosage units of drugs.

In terms of earning an income from the "pushing of drugs," an example should suffice: a physician who was charged with diverting stimulants and depressants saw around 50 patients per day. At $5.00 - $10.00 per visit, it was estimated that his weekly income was between $1,250 - $2,500, and his yearly income between $60,000 - $120,000.

Some physicians and other practitioners may turn to "pushing drugs or script" because they wish to maintain their standard of living, while at the same time their practice may be declining (e.g., patients dying off; or moving out of area).

The "pushing of drugs or prescriptions," however, is not the only method by which certain practitioners contribute to, or maintain, drug abuse in American society. With the relatively higher salaries practitioners earn as a whole, they are better able to purchase properties such as aircraft, or ocean-going boats. There are cases on record whereby practitioners who have puchased these properties have used such properties directly themselves, or in agreement with others, to illicitly import into the U.S. marihuana and cocaine, if not heroin and other drugs.

Discovery

Methods of discovering that practitioners are not distributing drugs or issuing prescription orders in accordance with professional practice include complaints made to law enforcement authorities by pharmacists, by friends of users, or by citizens. Cooperating informants, often drug abusers themselves, may provide information to authorities, or undercover agents may elicit such information in the course of discussion with drug users. Drug users may be arrested and prescription orders from the practitioner found on their persons, or the actual drugs themselves - in bottles labelled by the pharmacy with the physician's name. Some drug abusers may kill themselves from overdosing, or get into accidents, and subsequent investigation shows they obtained drugs from certain practitioners. Evidence of "drug pushing" may be uncovered in accountability audits of pharmacies made by DEA Compliance Investigators, or by State investigators on whom rests primary responsibility for review of drug distribution by pharmacies. When accountability audits are performed, the manner in which prescription orders have been written is studied closely. When investigators performing accountability audits find prescription orders which do not appear to be written according to certain requirements, suspicions may be aroused.

Pharmacists who observe thin- looking individuals cashing prescription orders for weight-reducing drugs, or certain customers cashing prescriptions for stimulants or depressants on a continual basis may alert authorities that an investigation should be made of the physician who is prescribing these drugs to these customers. Some pharmacists will not proceed immediately to the authorities, but rather warn the physician that they feel he may be overprescribing. Some pharmacists may even confiscate prescription orders. This is one reason why some physicians operate their offices as pharmacies, by ordering large quantities of drugs from drug distributors, and by hoping to avoid the necessity of clients cashing prescription orders at pharmacies over which they have no control.

Another method of discovery involves a system known as ARCOS

(Automated Reports and Consolidated Orders System) run by DEA. This system provides an audit trail of drug inventory transactions which are originated by manufacturers, distributors, importers and exporters of certain substances which have been declared by Federal law as controlled substances. Since distributors of any controlled substance in Schedules I and II and/or any narcotic substance in Schedule III must report to ARCOS, an automated report is maintained of purchases of any of these drugs by physicians. ARCOS can thus be used to track the purchases, by physicians and other practitioners, of drugs from drug distributors and indeed had been used to pinpoint some physicians and other practitioners for further investigation. Some physicians may "push drugs" because they are not reportable under ARCOS. When this happens, practitioners who "push drugs" are creating new types of drug abuse in American society, and making necessary the evaluation of drugs not heretofore known as highly abusable, and which could be left unscheduled, or given lower control schedules.

There are many ways by which diversion of drugs, or prescription orders, by practitioners can come to the attention of authorities. A practitioner who "pushes script or pills" must decide whether to increase his activities in this area thereby taking greater chances that he will be "discovered" or to limit his activities, thereby limiting his income, but also decreasing the opportunity for discovery. What actually happens depends on a number of factors including the type of "patients" the practitioner sees, his knowledge about how pharmacies in his area may react if they see many of his prescription orders, or whether the practitioner lives in a less populated geographical area where there is more personal contact, or in a large metropolitan area where there is more anonymity. An important factor, also, is greed.

Pursuit

"Pursuit" refers to developing a case after discovery has occurred, and attempting to determine whether a practitioner is, or is not, operating within the confines of professional practice. In most cases, pursuit involves special agents, or investigators, acting in undercover capacity and posing as patients, often as truck drivers. More often than not, in cases included in this study, it was stimulants that practitioners were writing prescriptions for.

Often, undercover agents would directly ask for drugs, or prescription orders without stating that a medical condition existed which required their administration. They would attempt to get drugs, or prescription orders, for their girl friends, wives, and friends. They would be underweight to begin with, and still ask for drugs or prescription orders to reduce even further. Undercover agents would attempt to determine whether they could obtain large quantities of drugs per prescription order, could get prescription orders under false names and addresses, and would attempt to determine whether they could obtain drugs or prescription orders within a few days, or weeks, following the present visit, and definitely prior to the time when the drugs, or prescription order, would be expected to run out. Undercover agents, and informants, would often be "wired" to record conversations. Such "wiring" more often than not went undisclosed because the practitioners rarely, if ever, physically examined the patients.

In pursuing a case, undercover agents might develop some unique and interesting methods. For example, in at least one of the cases, undercover agents had at their disposal a large Peterbilt truck which they drove around in posing as truck drivers.

In pursuing a case, agents may wish to interview persons who were supposedly recipients of drugs on the prescription order. Some persons interviewed may claim that they never received the drugs on prescription orders written for them. This may be true. Other patients, those who are drug abusers and do not want to lose their source of supply - the physician - often prove to be non-cooperative. Some of these persons which agents encounter are very incoherent, "spaced out," or perhaps even dangerous - which is one reason why interviews are often done in pairs of agents.

At any rate, there is no set standard by which "pursuit" of a case is terminated and an arrest made. There may only be a few counts against the practitioner of dispensing or distributing, or causing such, outside of the course of professional practice, or there may be many. Each case is treated differently for a number of reasons. Ideally, there are enough counts of dispensing, or distributing, or causing such, outside of the course of professional practice for the case to proceed to trial, and for a conviction to result.

Arrest

From January 1, 1972 - November 21, 1977 there were 129 practitioners arrested by the Federal Government, and included in this study. Doctors of medicine accounted for 78% of these arrests. In terms of sex, there was only 1 female practitioner arrested. This was a 57 year old physician charged with delivery of depressants. By race, 88% of the practitioners arrested were white, and 12% were black and other races. The median age for arrestees included in this study was 50.

By year of arrest, there was an average of 12 practitioners arrested per year for 1972 and 1973, with an average of 27 arrested per year for the period 1974-76. A slightly higher number is expected in 1977. The reason that this number of arrestees is so small is that primary responsibility for arresting and prosecuting practitioners lies with the States. For example, in the 12 States with Diversion Investigation Units during the period July 1976-June 1977 there were 88 arrests of practitioners. Diversion Investigation Units represent combined Federal and State input into establishing teams of investigators to reduce diversion of drugs at the retail level, including diversion by practitioners.

As Table II shows, the principal violation charged at time of arrest was "delivery. This is a descriptive term which by and large means that the practitioner was charged with a violation of Title 21 United States Code, Section 841 (a) (1) which reads: "Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."

Since Title 21 U.S.C. 801-966 and Title 21 Code of Federal Regulations Part 1300 to End both define "practitioner" as a "physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research," a violation of the law is incurred when an individual who is authorized to administer, dispense, or distribute controlled substances does so *outside* of the course of professional practice or research. Since the term "professional practice or research" is not defined in any of the regulations, this general term becomes subject to differing interpretations. In the courtroom, whether the administering, dispensing, or distributing of controlled substances was done by a practitioner acting in the course of "professional practice or research" is a matter to be determined by members of the jury, and/or the Judge.

For slightly more than one-half of the practitioners (52%), the primary type of drug involved was "stimulants." Principal types of stimulants involved were: Biphetamine (dextroamphetamine and amphetamine); Preludin (phenmetrazine); Plegine (phendimetrazine); Desoxyn (methamphetamine); Ritalin (methylphenidate); Dexamyl (dexedrine); and Fastin or Ionamin (or some form of phentermine).

One out of every five cases involved "narcotics" primarily narcotics such as Dilaudid. Of the 22 cases in which depressants were the primary drug involved, the most widely involved depressants were: Quaalude (methaqualone); Tuinal (seconal and amytal); and Sodium Seconal.

Information was available on the arrest form to show whether the arrestee was a drug user or not. Of 115 cases with this information available, for 25% of the cases the practitioner was a drug user. Only limited data appeared on what the primary drug used was; the limited data showed it to be cocaine.

Around 9 out of 10 (88%) of the practitioners were released following arrest. Among practitioners who were released, the primary type release was personal recognizance with guarantee of bail/bond (46%). The median (ungrouped) bond was $5,000. Bail/bond release occurred for 31% of practitioners who were released (median bond of $5,000), and personal recognizance alone for 23% of the practitioners who were released.

Following arrest, illicit activity on the part of practitioners may cease, or diminish because additional activity could mean that additional charges would be lodged. However, following arrest, some practitioners continue to dispense drugs and issue prescription orders outside of the course of professional practice. This activity may continue because Medical Boards and licensing boards often will not consider suspension or revocation of a practitioner's license until conviction in court, and since the Federal laws state that registration cannot be revoked without conviction, the practitioner in effect is given "license" to continue his illicit activities.

This did not mean a lengthy time in which to continue activities, however. For around one-half (51%) of the cases the interval between date of arrest and first disposition of case was no more than 5 months. For around 91% of the cases the interval was no more than 11 months.

TABLE II.
Principal violation of law charged at time of arrest, and principal drug violator was charged with: practitioners arrested January 1, 1972 – November 21, 1977 with dispositions

	TOTAL		No stated Violation[1]	Delivery	Possession	Conspiracy	Manufacturing	Import	Other	Not Available
	Number	Percent								
TOTAL										
Number	129	xx	23	77	11	10	—	1	6	1
Row Percent	xx	100%	18%	60%	9%	8%	—	1%	5%	1%
		100%	100%	100%	100%	100%	—	100%	100%	100%
NARCOTICS										
Total	27	21%	52%	15%	9%	10%	—	—	17%	—
Heroin	4	3%	17%	—	—	—	—	—	—	—
Other narcotics	23	18%	35%	15%	9%	10%	—	—	17%	—
DEPRESSANTS	22	17%	4%	22%	18%	10%	—	—	17%	—
STIMULANTS										
Total	67	52%	22%	59%	55%	50%	—	100%	50%	100%
Methamphetamine	3	2%	4%	3%	—	—	—	—	—	—
Cocaine	15	12%	9%	8%	18%	30%	—	100%	17%	—
Other stimulants	49	38%	9%	49%	36%	20%	—	—	34%	100%
HALLUCINOGENS										
Total	12	9%	22%	3%	18%	30%	—	—	—	—
Marihuana	9	7%	13%	1%	18%	30%	—	—	—	—
Hashish oil	—	—	—	—	—	—	—	—	—	—
Hashish	—	—	—	—	—	—	—	—	—	—
LSD	1	1%	4%	—	—	—	—	—	—	—
Other	2	2%	4%	1%	—	—	—	—	—	—
NOT AVAILABLE	1	1%	—	—	—	—	—	—	17%	—

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[1] *The collection form for arrest information did not specify violation at time of arrest until January 1974.*

Disposition

"Disposition" refers to judicial outcome of a case. Of the 129 practitioners included in this study, Table III shows that conviction resulted for 77% (or 99 cases). The fact that some cases were declined (i.e., refusal of U.S. Attorney to prosecute) or dismissed (cases can be dismissed on motion of judge, prosecution attorney, defense attorney, or all) did not always mean insufficient evidence, faulty affadavits, or other problems of a law enforcement nature. In some cases, for example, these cases did not result in conviction because of cooperation on the part of the practitioners; mental incompetency on the part of the practitioners including alcoholism; the practitioner agreed to retire from medicine; or the practitioner died from a drug overdose.

Table IV shows that of the 99 cases in which conviction resulted, the majority of practitioners (63%) received a prison term. The median amount of term involved was 36 months. Primarily, practitioners receiving a prison term did not additionally receive a fine. When a fine was involved (for 17 of 62 practitioners receiving a prison term), the median amount was $8,000. However, these practitioners also received less time in prison (median term of 12 months).

Some 31% of the practitioners who were convicted received probation - although there were more cases in which probation plus fine was the penalty than probation alone. Among convicted practitioners who received probation, the median term was 24 months. Those receiving no fine had a median term of 12 months; those receiving a fine (median of $5,000) received a median term of 36 months.

For only 6 cases in which conviction resulted was the penalty levied only a fine. For these cases, the median amount of fine was $1,500.

One of the items on the DEA-210 Form is "was defendant sentenced to maximum sentence provided by law." Among cases in which conviction resulted and for which information was available to this question, in 92% of the cases (66 out of 72 cases), the defendent was *not* sentenced to the maximum sentence provided by the law.

Of the 99 cases for which conviction resulted, for almost one-half of these cases (49%) a plea was involved. A jury trial was held for 31% of the cases, and a court decision occurred for 19% of the cases.

TABLE III

Disposition of Federally-prosecuted practitioners, by final charges: practitioners arrested January 1, 1972 – November 21, 1977 with dispositions

	TOTAL		Final Charges[1]							
	Number	Percent	Delivery	Possession	Conspiracy	Manufac-turing	Other	Multiple Charges	Not Available	No Final Charges
TOTAL										
Number	129	xx	47	13	5	–	14	25	2	23
Percent	xx	100%	36%	10%	4%	–	11%	19%	2%	17%
				Column Percent						
		100%	100%	100%	100%	–	100%	100%	100%	100%
Declined	3	2%	–	–	–	–	–	–	–	13%
Dismissed	18	14%	–	–	–	–	–	–	–	78%
Acquitted	7	5%	6%	8%	20%	–	–	4%	50%	–
CONVICTED										
Total	99	77%	94%	92%	80%	–	100%	96%	50%	–
Fine only	6	5%	4%	–	20%	–	14%	–	50%	–
Probation										
Total	31	24%	28%	38%	20%	–	50%	20%	–	–
No Fine	13	10%	11%	23%	20%	–	21%	4%	–	–
Plus Fine	18	14%	17%	15%	–	–	29%	16%	–	–
Prison										
Total	62	48%	62%	54%	40%	–	36%	76%	–	–
No Fine	45	35%	49%	46%	20%	–	29%	44%	–	–
Plus Fine	17	13%	13%	8%	20%	–	7%	32%	–	–
Other	2	2%	–	–	–	–	–	–	–	9%

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[1] "Final charges" is defined to mean "charges as of record at time of the trial". There are no final charges for cases which were declined or dismissed.

TABLE IV

Disposition of convicted Federally-prosecuted practitioners, by term in months, and amount of fine: practitioners arrested January 1, 1972 — November 21, 1977, with dispositions.

	Grand Total	No Fine	Fine	Under $1,000	$1,000-$1,999	$2,000-$2,499	$2,500-$4,999	$5,000-$9,999	$10,000 $19,999	$10,000 and over	Median
Total	99	58	41	3	6	1	5	11	9	6	
Fine only	6	xx	6	1	2	1	—	—	1	1	$ 1,500
Probation	31	13	18	2	2	—	4	5	3	2	$ 5,000
1 - 12 Months	10	7	3	—	—	—	—	3	—	—	$ 5,000
13 - 24 Months	7	2	5	1	—	—	2	—	2	—	$ 3,000
25 - 36 Months	9	3	6	1	2	—	2	—	1	—	$ 2,000
37 - 48 Months	—	—	—	—	—	—	—	—	—	—	—
49 - 60 Months	5	1	4	—	—	—	—	2	—	2	$15,000
61+ Months	—	—	—	—	—	—	—	—	—	—	—
Median	24 months	12 months	36 months								
Prison	62	45	17	—	2	—	1	6	5	3	$ 8,000
1 - 12 Months	21	12	9	—	1	—	—	5	2	1	$ 6,000
13 - 24 Months	6	4	2	—	—	—	1	1	—	—	$ 4,000
25 - 36 Months	12	10	2	—	—	—	—	—	2	—	$16,500
37 - 48 Months	1	—	1	—	1	—	—	—	—	—	$ 1,600
49 - 60 Months	12	10	2	—	—	—	—	—	1	1	$20,250
61+ Months	10	9	1	—	—	—	—	—	—	—	$90,000
Median	36 months	36 months	12 months								

*one case

One reason that the interval between arrest and first disposition of case may be short may be the fact that a plea was involved in a substantial number of cases as opposed to holding a jury trial.

In some cases even though the practitioner may be found guilty of the charges against him, there is a period of time before sentence is handed out. This may occur when a presentence evaluation is to be made. This time has been used by some practitioners to continue to write prescription orders. For example, a physician who was charged in an 80 count indictment for distributing drugs in a mid-west city and subsequently convicted on 30 counts continued to write prescription orders for Dilaudid for $50 to $100 per prescription order. It is not possible during this time for the Federal Government to divest the practitioner of his license to handle controlled substances, and prescription orders.

However, once a practitioner has been convicted of a felony under Title 21 U.S.C. Sections 801-966, or under any other law of the United States or any State, relating to any substance defined as a controlled substance (and sentence has been handed down); or has had his State license or registration suspended, revoked, or denied by competent State authority, and is no longer authorized by the State to engage in manufacturing, distributing, or dispensing of controlled substances, grounds exist for the Attorney General to suspend, or revoke the controlled substances privileges granted a registrant by DEA. The procedure by which this is done involves an "order to show cause" served upon the practitioner as to why his registration should not be denied, revoked, or suspended. This "order to show cause" calls upon the practitioner to appear before the Attorney General, or his designee at a time and place stated in the order, but in any event not less than 30 days after receipt of the order. Proceedings are carried out under an Administrative Law Judge. Unfortunately, information is not immediately available to show what proportion of these practitioners lost their privileges to administer, distribute, or dispense controlled substances. It is also possible to lose privileges in certain schedules of drugs, or for certain drugs only. It should be noted that revocation does not necessarily mean permanent revocation of controlled substances privileges. Under certain conditions, as for example when a physician again becomes licensed by a State to practice, the physician may re-apply for controlled substances privileges and an evaluation will be made as to whether they should be granted by DEA.

Regarding the number and percentage of practitioners in this study who were convicted and who filed appeals, information in the DEA files is sketchy. Information available shows that for some cases when appeals were filed, penalties were reduced or cases overturned. The appeal process can benefit some practitioners who want to retain their medical privileges, even though illicit activity has been uncovered. Thus, for example, some State Licensing Boards, after they have revoked a practitioner's license, will return the license while the appeal is under way. This does not necessarily mean that practitioners will continue to dispense, or write, for controlled substances - especially if their controlled substances privileges have been revoked, or suspended. They can, however, dispense and prescribe for non-controlled prescription drugs and thereupon create new types of drug abuse in some of their "patients".

Recommendations

The problem of how to control diversion of drugs by medical practitioners is not an easy one to solve. Primary responsibility lies with the States. The role of the Federal Government is limited. Among the problems interfering with the ability of the States to handle this problem area are the following:

1. State agencies are weak regulators of practitioners. For example, the fact that often State medical boards and agencies are composed of practitioners in the same profession as that which they regulate does not help. Also, State agencies and medical boards often will not take action until a conviction has been secured on a practitioner. According to a recent study of professional licensing boards, about 78% of them do not consider a conviction for violating a State or Federal drug law as grounds for action against a licensee.
2. Sate laws may be less than effective to prevent diversion by practitioners. For example, some State drug schedules may omit drugs controlled in Federal drug schedules; there is failure in some States to separate medical licensing functions from authority to use controlled substances; authority to suspend or revoke registration is placed in some State courts as opposed to a regulatory agency.
3. State licensing boards may not have the statutory authority they need to carry out responsibilities. For example, there may be a lack of authority for State medical boards to employ investigators; there may be a lack of clarity in statutes regarding grounds for license revocation and suspension; statutes may not specify the status of a licensee pending appeal.

Since States are less than effective in handling diversion by practitioners, some steps being taken by the Federal Government include:

1. Supporting the establishment of Diversion Investigation Units (DIU's). DIU's are units staffed by investigators from various State agencies and which have as a mission to curtail diversion of legitimate drugs from the retail level of the drug industry within a given State. DIU's emphasize criminal investigations by using undercover buys. To date there are 17 States having DIU's.
2. Establishing a State Licensing Board Effectiveness Project. The goal of this project is to obtain assistance in three pilot States to

provide special investigative training schools; encourage cooperative investigations; assign compliance investigators to State licensing boards; fund additional state inspectors; and provide a special attorney for the State Attorney General's Office.

3. ARCOS. The system known as ARCOS, mentioned earlier in this paper, is still in the R&D phase. The intent of this system is to provide for an audit trail of drug inventory transactions which are originated by manufacturers, distributors, importers, and exporters of certain controlled substances. ARCOS can be used to study the distribution of drugs in these Schedules to, among others, pharmacies and physicians.
4. Educating practitioners. This refers to bringing about an increased awareness of diversion of drugs by practitioners. Methods used include publications, conferences, and working groups. Voluntary compliance, for example, is a program existing within DEA which involves a pharmacist who works closely with various health professions in publishing and distributing information to reduce diversion, as well as in setting up meetings to discuss regulatory functions and problems. Programs are also being developed to improve physician's prescribing practices.

Conclusion

Society has given to practitioners certain privileges not granted to others. These privileges pertain to the administering, dispensing, distributing, and prescribing of controlled substances. Some practitioners, in taking advantage of these privileges, have established for themselves illicit drug distribution networks. There is an increasing awareness on the part of the courts, and the public, of the nature, extent, and seriousness of illicit drug distribution by some practitioners. While steps are being taken to combat the contribution to drug abuse in American society by practitioners operating outside the scope of legitimate medical practice, it is apparent that much more needs to be done. Abuse of licitly manufactured substances in American society is more widespread, and more costly over the long run, than abuse of illicitly manufactured substances, including heroin.

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APPENDIX IX

Rep. Bill Hughes (D-NJ): "Reduction in law enforcement," as recommended by the White House, "is the wrong way to go."

Congress Tightening Noose on Criminals

Congressman Bill Hughes (D-NJ), chairman of the House Subcommittee on Crime, told pharmacy leaders at the NARD Legislative Conference about several of the 64 recommendations of the Attorney General's Task Force of Violent Crime:

- Institute bail reform so that criminals aren't quickly returned to the street.
- Address the problem of juvenile crime.
- Track career criminals so that the courts have information about defendants who are repeat offenders.
- Establish a user fee for non-law-enforcement agencies that request fingerprint checks by the FBI.
- Substantially increase personnel in federal law enforcement agencies. "I'm most consistently at odds with the Administration" on this subject, Hughes said in his first appearance before a pharmacy group. The White House has recommended a number of cuts in those agencies, all of which have been turned down by Congress. "Reduction in law enforcement is the wrong way to go," Hughes said. "As the economy turns down, crime can be expected to increase; so we lose ground" even if law enforcement personnel stay at present levels.

Tracking drug-dependent criminals

Hughes described one recently passed law that calls for the tracking of drug-dependent criminals. "We know drug-dependent people commit an inordinate amount of crime. If an individual is drug dependent" and he is released after serving a sentence, "he'll be right back committing more offenses." This law provides for a year-long follow-up program, during which the individual has a weekly urinalysis, which is done at less frequent intervals as the year goes on if the individual stays off of drugs.

Hughes also favors legislation to address handgun abuse as a means to combat pharmacy crime. Congress will hold hearings on pharmacy crime, "this session, I hope," said Hughes.

DEA's New Stance on Pharmacy Crime

Francis Mullen, DEA administrator: "If [pharmacy crime] legislation called for additional resources for the FBI, I could support it."

Francis Mullen, Jr., administrator of the Drug Enforcement Administration, who now reports to the head of the FBI, told the Legislative Conference that budget limitations make it hard for the two agencies to keep up with their present cases.

However, to one questioner who asked about his stand on pharmacy crime legislation, Mullen responded, "If the legislation would call for additional resources for the FBI, I could support it." Mullen cautioned, "We can't get into every one of the 10,000 cases" of pharmacy crime each year, but would have to use agency resources to investigate only those in which violence was involved.

Laws on look-alikes are forthcoming

Mullen, who was speaking to his first pharmacy leaders meeting since assuming office, also said that the recent Supreme Court decision (Hoffman) on paraphernalia or so-called "head" shops would be used to impose federal laws on look-alikes of controlled substances. These laws, he said, "are forthcoming."

Mullen acknowledged that thefts from pharmacies are becoming more violent. In 1976, one pharmacy theft in 10 was an armed robbery; by 1981, that proportion had doubled, to two in 10.

Mullen stated that, in efforts to combat drug traffickers, FBI agents are now being brought into investigations. DEA is dismantling "its regional setup, establishing national control and focus on investigative activity." Unfortunately, those efforts, like many others Mullen proposes, are aimed more at large-scale importers of illicit drugs rather than at

Economic Outlook

the robbers who daily threaten the lives of pharmacists.

Here are pieces of legislation that Mullen says would help DEA:

- Federal bail reform. "Paying $1 million bail is considered just a cost of doing business for drug traffickers." Danger to the community and repetitions of the same offense ought to be considered grounds for no bail, he said.
- Amendments to the Freedom of Information Act. "Some of the information we must now disseminate under FIA inhibits individuals who could identify traffickers."
- Tax reform to enable the IRS to give the DEA freer access to its records.

Durenburger on Pharmacy Crime

Senator David Durenberger (R-MN), whom the *NARD Journal* profiled last June as one of the most important supporters of NARD pharmacy crime legislation, again affirmed his support for the NARD bill. He noted that many downtown St. Paul, Minnesota, drugstores are putting signs in front windows declaring, "We don't carry hard drugs."

The problem now facing passage of the legislation, he said, "is trying to get it through the Senate Judiciary Committee while they contemplate abortion, prayer in school, and other life-saving techniques." He said he expects hearings to be held on the legislation soon.

Economic Outlook: Congressional Response

After a year of being on the outside looking in, House and Senate Democrats see a chance to regain some lost ground in this session of Congress. With the President's recent dominance over the legislative branch beginning to fade, Democrats feel 1982 will be a good year to once again assert themselves.

The economy, of course, is uppermost in their minds. And, as evidenced by their presentations at NARD's legislative conference, they are not at all hesitant about pointing out what they see as the Administration's failures and offering their own alternatives.

The one thing that is certain about this year's budget fight is that Democrats, especially ones such as House Budget Committee Chairman James R. Jones, will play the important role in fashioning fiscal policy that was denied them last year by [illegible]dent Reagan. What they told [illegible] pharmacy leaders gave a good indication of the resistance the Administration will find in Congress this year and highlighted the areas where debate will be the most heated in the months ahead.

Rep. James R. Jones (R-OK). The number one job for 1982 is to get those interest rates down.

Jones: Economic Recovery Depends On Undoing Budget Changes

As the broad based Congressional support President Reagan enjoyed last year has faltered, the job of chief architect of the FY 1983 federal budget seems increasingly likely to settle upon House Budget Committee Chairman James R. Jones (R-OK). And the message he had for the pharmacy leaders was that many of the budget measures passed by Congress last year would have to be undone this year before there would be any chance for economic recovery.

Tightening our fiscal policy

"The only way we're going to get out of this recession is to tighten up our fiscal policy and demand of the [Federal Reserve Board] that we expand slightly our monetary policy in order to get interest rates down," Jones declared.

In terms of tightening fiscal policy, he said he would be seeking to:

- Reduce federal deficits to take the pressure off the financial markets.

APPENDIX X

NARD Pushes Pharmacy CRIME BILL

97th CONGRESS
1st SESSION

The following bill was presented to the U.S. House of Representatives and the U.S. Senate when the 97th Congress convened on Jan. 2, 1981. The National Association of Retail Druggists will continue its efforts to have pharmacy crimes made Federal offenses. After 11 years of being frustrated by the Drug Enforcement Administration and its predecessor organization, 1981 appears to be our year for success.

To be presented
IN THE SENATE OF THE UNITED STATES
and
IN THE HOUSE OF REPRESENTATIVES

A BILL

To provide penalties for persons who obtain or attempt to obtain narcotics or other Federally controlled dangerous drugs from any pharmacist by force or violence and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Pharmacy Protection and Violent Offender Control Act of 1981."

TITLE I-FINDINGS AND DECLARATION OF PURPOSE

FINDINGS

Sec. 101. The Congress hereby finds that:

(1) Robbers and other vicious criminals seeking to obtain Federally controlled drugs have more and more frequently targeted pharmacies;

(2) The dramatic escalation of the diversion of Federally controlled drugs for illegal purposes by those who rob Federally registered pharmacies is directly related to successful efforts by the Department of Justice to prevent other forms of diversion;

(3) The victimization of pharmacists, their families, employees and customers, as a direct result of the aggressive enforcement of Federal drug laws, was not intended by Congress;

(4) In order to address the obvious discrepancy in Federal law it is necessary that robbery of a pharmacy to obtain controlled drugs, as is the case when such drugs—without conditions relating to value, amounts involved or the presence of violence—are obtained by fraud, forgery, or illegal dispensing or prescribing, be made a Federal offense;

(5) Any truly comprehensive strategy designed to curb pharmacy crime, must of necessity, in cases of robbery, make available the investigative and prosecutorial resources of the Federal government, as presently is the case when Federally controlled drugs are obtained by other unlawful means; and,

(6) A close cooperative working relationship with pharmacy practitioners is essential to a successful campaign against pharmacy crime.

PURPOSE

Sec. 102. It is the purpose of this Act—

(1) To assist state and local law enforcement officials to more effectively repress pharmacy related crime;

(2) To enhance the expeditious prosecution and conviction of those guilty of pharmacy crimes;

(3) To assure that convicted offenders, especially repeaters, receive appropriate mandatory penalties;

(4) To provide additional protection for pharmacies and pharmacists against the ever increasing level of violence directed at obtaining Federally controlled drugs; and

(5) To assure the widest possible involvement of the pharmacy community in the Federal effort to curb pharmacy crime.

DEFINITIONS

Sec. 103. As used in this Act the term—

(1) "Pharmacists" means any person registered in accordance with the Controlled Substances Act for the purpose of engaging in commercial activities involving the dispensing of any controlled substance to an ultimate user pursuant to the lawful order

of a practitioner.

(2) "Dispensing" shall have the same meaning as that provided under section 102 (10) of the Controlled Substances Act;

(3) "Practitioner" shall have the same meaning as that provided under section 102 (20) of the Controlled Substances Act;

(4) "Controlled Substance" shall have the same meaning as that provided under section 102 (6) of the Controlled Substances Act.

TITLE II—CERTAINTY OF IMPRISONMENT, EXPEDITED TRIALS. AND SEVERE PENALTIES FOR REPEAT OFFENDERS

Sec. 201.

(a) It shall be unlawful for any person to take or attempt to take, by force or violence, or by intimidation, from the person or presence of another, any materials, compound, mixture, or prescription containing any quantity of a controlled substance and belonging to, or in the care, custody, control, management, or possession of any pharmacist.

(b) Any person who violates subsection (1) shall be fined not more than $5,000 or imprisoned for less than five years or both such fine and imprisonment.

(c) Any person who violates, or attempts to violate, subsection (1) while armed, or by assaulting any person, or by putting in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than $10,000 or imprisoned for not less than ten years, or both such fine and imprisonment.

(d) Any person who in violating or attempting to violate subsection (1), kills or maims any other person shall be imprisoned for not less than twenty years nor for more than life.

(e) Any person who attempts or conspires to commit any offense defined in this section is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Sec. 202.

(1) Any person, after having been convicted of a section 201 offense who is again convicted of a second or subsequent violation of section 201 shall in addition to the punishment provided for in section 201, be sentenced to a term at least equivalent to that imposed for the second or subsequent violation.

(2) In no case shall any additional term of imprisonment be imposed pursuant to this section run concurrently with any terms of imprisonment imposed for the underlying violation.

Sec. 203. The imposition or execution of any Title II sentence shall not be suspended and probation shall not be granted.

Sec. 204. A trial of any crime under this Title shall have priority on the calendar of any court of the United States. Upon receipt of the copy of such complaint, it shall be the duty of the presiding judge to assign the case for hearing at the earliest practicable date, and to assure the case to be in every way expedited.

TITLE III—PHARMACY PRACTITIONER ADVICE AND COORDINATION

Sec. 301.

(1) In order to assure the maximum degree of cooperation necessary for successful implementation of this Act and other relevant statutes, the Attorney General, in consultation with the Secretary of Health and Human Services, through the Administrator of the Drug Enforcement Administration shall regularly meet, not less than four times a year, with the Joint Commission of Pharmacy Practitioners. Other interested organizations, as designated by the Attorney General, may participate at the meetings required by this Section. Additionally, the Joint Commission of Pharmacy Practitioners (JCPP) shall make recommendations to the Administrator and the Congress at least annually with respect to pharmacy, policy, budget, priorities, operations and management of the Federal effort to curb pharmacy related crimes, especially robbery. In this regard it is anticipated that the JCP would play a vital role in the development and adoption of relevant model regulations and laws.

(2) (a) Members of the Commission who are employed by the Federal government full time shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Commission.

(b) Members of the Commission not employed full time by the Federal government shall receive compensation at a rate not to exceed now or hereafter prescribed for GS-18 of the General Schedule by section 5332 of title 5 of the United States Code, including traveltime for each day they are engaged in the performance of their duties as members of the Commission. Members shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Commission.

Sec. 302.

In order to provide accurate and current information on the nature and extent of pharmacy crime the Department of Justice shall collect relevant data and include pertinent results in its annual Uniform Crime Report.

TITLE IV—AUTHORIZATION OF FUNDING AND EFFECTIVE DATA

Sec. 401. There are authorized to be appropriated for the fiscal year ending September 30, 1981, and for each year thereafter such sums as may be necessary for carrying out this Act.

Sec. 402. All Sections in this Act including this Section shall become effective upon enactment.

APPENDIX XI

[From Crime and Its Impact on Small Business, hearing before the Select Committee on Small Business, U.S. Senate, 96th Congress, 2d Session, May 29, 1980, pp. 82-91]

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STATEMENT OF JOHN B. TUCKER, JR., DIRECTOR OF GOVERNMENT AFFAIRS, NATIONAL ASSOCIATION OF RETAIL DRUGGISTS

Mr. **TUCKER**. Mr. Chairman, I am John B. Tucker, Jr., director of government affairs for the National Association of Retail Druggists. I am accompanied today by two practicing pharmacists and pharmacy owners; Charles West from Little Rock, Ark., and Ron Felts from Joelton, Tenn.

The National Association of Retail Druggists was established nearly a century ago to unite independent retail pharmacists and to provide a means for these pharmacists to contribute to their professional betterment and the public good.

NARD speaks for the owners of more than 30,000 independent retail pharmacies, who employ 50,000 pharmacists. NARD members dispense nearly 70 percent of all prescription drugs and serve 18 million consumers daily.

NARD is grateful to Chairman Nelson and Chairman Sasser and the Senate Select Committee on Small Business for the opportunity to present testimony on "Crime and Its Impact on Small Business."

Independent retail pharmacies have a serious crime problem that is steadily growing worse.

Daily, pharmacists and customers are being harmed or killed by criminals and addicts who want the narcotics and other controlled substances in a drugstore. Because pharmacists have these drugs in their inventories, they are more susceptible to robbery and burglary than other small business.

When a liquor store or gas station is held up, the robber takes the cash and leaves. If merchandise is stolen, it must be fenced for about 10 percent of its face value. When a pharmacy is robbed, often the cash is ignored and all that is taken are a few bottles of pills or tablets. The street value of the prescription drugs costing the pharmacist $75 to $100 will be in the thousands. For example, 100 tablets of dilaudid cost $20—their street value is $5,000.

Senator **SASSER**. What is dilaudid?

Mr. **TUCKER**. It is a narcotic painkiller.

You can see why robbers prey on pharmacists.

Over the past 10 years, the Drug Enforcement Administration of the Department of Justice has successfully dried up most of the illicit sources of prescription drugs. When truck stops were eliminated as major sources of amphetamines and other drugs, drugstores became the target of burglaries. DEA told us to put bars on the windows, nail down the skylights and brick up the back doors. It is not uncommon for pharmacists or consumers to be held hostage, beaten up or killed. DEA turns its back on the dilemma, calling it a local problem. We have done everything they ask, but DEA is more interested in drugs than in innocent people who are being hurt.

There is more to this problem than injury. It costs the local community money too. If the pharmacist can afford it, he puts in a security system; invariably, he chooses the most economical system available, which is usually the least effective. Three percent net profit margins simply won't allow pharmacists to absorb the added costs. The increased overhead as a result of the new system must be paid for by increased prices to the cash-paying customers. Medicaid and private third-party prepaid prescription programs do not pay for the added costs. If the increased prices are too high, customers will go elsewhere and the pharmacy may eventually go out of business. This is particularly true in inner-city areas with high crime rates.

Independent retail pharmacies are generally the only drugstores left in the inner city. When these stores are forced to close, no chain drugstores move in. The community is deprived of local pharmaceutical services. Often, inner-city dwellers are the patients who need the greatest care.

Another preventive step being taken by some pharmacists in vulnerable areas is simply to discontinue stocking narcotics and controlled substances.

This can hurt both the pharmacist and the consumer. If the consumer needs a narcotic painkiller for cancer or severe injury, he needs it immediately. The patient cannot wait 3 days for the pharmacist to order the drug. He leaves the community and goes to another store to have the prescription filled.

The pharmacist loses that business and, many times, loses the customer. Customers do not want to patronize pharmacies that cannot satisfy their needs. Therefore, more business is lost. If this happens often enough, the stores close.

The choice is not pleasant—carry the narcotics to serve your patients and be subjected to robbers who want the drugs or don't carry the narcotics, protect your life and lose your customers and your business.

Mr. Chairman, I have not discussed the other types of crime which affect pharmacies—shoplifting and internal theft. I do not mean to say that these are not important, because they cost pharmacists a lot of money just as they do other small businesses. However, in our view they don't compare to the problem of armed robbery of controlled drugs. Merchandise can be replaced; your life cannot.

S. 1722, the Criminal Code Reform bill, is before the full Senate. The bill contains a section which would make robbery of controlled drugs a Federal crime. I ask you and the members of the Select Committee on Small Business to support this provision. It is a good opportunity to help pharmacists and small businesses reduce crime. Each community will benefit if we can reduce the incidence of robbery of controlled drugs from pharmacies. I will provide your staff with a more detailed explanation of the section we support. Once again, I hope you will support the pharmacy robbery section.

At this time, I would like Ron Felts and, then, Charles West to relate briefly some of their experiences as practicing pharmacists.

We will be happy to respond to any questions you may have.

Senator SASSER. Thank you, Mr. Tucker. I want to make a preliminary statement and say that we extend a warm welcome this morning to Mr. Ron Felts, one of my constituents and the most important man in the room today, Senator Hatch, because he can vote for me.

Senator HATCH. I dispute that because we have someone from Utah here as well. [Laughter.]

Senator SASSER. And I am delighted to see him and I would like to say to you, Mr. West, that Senator Bumpers was here and was going to try to get back for your testimony. He had two or three other committee meetings this morning and not even Senator Bumpers has learned how to be in two places at once. But his absence does not indicate a lack of interest in your testimony or problem.

Mr. Felts, do you wish to proceed first or Mr. West.

Mr. FELTS. Yes; please.

STATEMENT OF RON R. FELTS, PHARMACIST, JOELTON, TENN.

Mr. FELTS. I am Ron Felts. I am a practicing pharmacist from Joelton, Tenn., and I do own Joelton Prescription Shop.

I would like to thank you for conducting these hearings because pharmacy robberies in Tennessee have, unfortunately, reached epidemic stages. My store is in suburban Nashville and we are not in a high-crime area. Yet, I have been robbed several times.

One robbery took place June 8, 1978, when two gunmen, masked, came into my store and held me, my clerk, and five customers at bay, and finally locked us in the narcotic room. They came in with a distinct shopping list and told me exactly what drugs they wanted. The cash that was stolen in this case was merely incidental and seemed more of an afterthought than anything else.

At the time of the robbery I had on hand 282 dilaudid, 2 milligram which, as he told you, is probably the strongest oral analgesic we have in a community pharmacy. I had it in hand for a cancer patient at the time. My cost for these 282 tablets would be less than $30, yet they command a street value of $40 per tablet or $11,280. And I can assure you he had no trouble disposing of them that afternoon. This was just for the dilaudid taken from me that day. That is 130 times its original value.

If you would like, I would be glad to explain why they command such a high price.

Senator SASSER. I would like to know.

Mr. FELTS. I, myself, think it is very interesting. As the gentleman previously stated, if these chop shops can take a Lincoln Mark V and chop it up, they get some where around 10 to 20 percent of its original value. I know of no other commodity whose intrinsic increases like this after a theft.

Why $40 a tablet? First of all, this is a pharmaceutically pure drug. It is a very exact dosage. The addict, a high-class addict I might add at $40 a tablet, knows the precise duration of action, he knows how long it is going to be before he comes down, and how long it is going to be before he needs another one. He has no fear associated with other illicit street drugs where the user is never sure whether the drug has been cut too much or more important, whether it has not been cut enough and he would get an overdose. These high-class junkies, if you will, cannot risk an overdose so these drugs command a premium price.

At $40 a tablet, Jim, I wonder how many of us here could afford more than one or two for recreational use per month. So how is a person going to support a habit of 6, 8, 10, 12 tablets a day at a daily cost of $240 to $400 per day?

According to Nashville metro police statistics—I called Chief Hustleton before I left—75 percent of all crime in Nashville is drug related in one way or another. People are forced to further theft and robbery to support their habits. Based on the fact that most stolen goods are fenced for a mere fraction of their worth or 10 percent, the same $30 worth of dilaudid on my shelf which was stolen, now commands an $11,280 price tag which could potentially cause or involve $110,000 worth of stolen goods. This cannot be equated with a $30 robbery of a gas station or convenience market.

The far-reaching ramifications of this crime and the number of lives affected by this demand that we do everything we can to deter, convict, and punish those who inflict this degradation and burden upon our society.

I had customers come back to my drug store months after I was robbed and told me they were just starting to use my store again, something I had no control over. They were afraid to come in the store for fear of being caught in the middle of a robbery. I am sure other pharmacists are losing customers for the same reasons.

Now whenever the door opens I look up. It is a constant fear that pharmacists live with. The pharmacy has become a targeted profession by criminals who want drugs.

My partner was working in my store one day when he was held up. He seldom works the store and he had forgotten the combination to the narcotics safe. When the robber demanded the narcotics and told him to open the safe he told him that he didn't have the combination. The guy cocked the pistol, pointed it at his head, and said, "Open it or I'll blow your brains out." My partner picked up the safe which was in excess of 300 pounds. It took myself, and two other men, and a two-wheeler to get it in, but the adrenalin must have been flowing and he picked up the safe and offered to put it in the man's car. The robber was perturbed and he pistol-whipped my partner while he had the safe in his arms. The gun accidentally discharged but, luckily, when he hit my partner over the head the gun accidentally discharged and my partner only required a few stitches.

It is not unusual for a pharmacist to have a goody bag. And by this I mean a bag whereby if you came into my drugstore and said, "Ron Felts" and pointed a gun at me, "give me your dilaudid narcotics," this, that, and the other; I want to have some on hand. There are some pharmacists that keep some on hand for that reason and that reason only. They just want to get the robber out of the store before someone gets hurt. However, it does not prevent robberies and keep pharmacists and customers from getting hurt.

Mr. Chairman, as you know, Ken Phillips of Nashville was recently shot by a robber and he still does not have use of his right arm. He is paralyzed and they say it will be permanent. Ken was shot as he was reaching for a bag of narcotics for a robber.

More and more robbers come into pharmacies in Tennessee with shopping lists, if you will, of drugs they want. It is hard to describe how really frightening it is when, as you are being robbed, they pull out this shopping list and you know you are facing a hardened criminal. Because, first of all, when they come in the drugstore off the street, it is getting harder to get on the street. The hardened criminal places no value on human life.

I have been able to afford a security system but that does not prevent the crime. There are many pharmacists who do not have security systems at all or at best, very simple alarms.

We need assistance to stop the increasing number of drugstore robberies. Local officials and laws often have the criminal back on the street before you get to the courthouse. Point in fact, the two that held me up were convicted, I checked before I left Nashville, one of them is out on Murfresbor Road at the mental institution and the other one is back on the street.

As a pharmacist, my profession warrants that I carry narcotic drugs. It would be a real disservice to my patients not to stock these products. However, as a small businessman, I must consider the expense and danger of carrying these drugs. It is an unpleasant choice.

Mr. Chairman, I hope you will work to help pharmacists solve this real problem of robberies of CSA drugs from pharmacies.

I might add, that whenever I was invited to come here to this conference, I got on the phone and tried to find a pharmacist to come relieve me. And I called a girl who graduated the year behind I did, she has been practicing for 5 years, the first question she asked me was, "How many times has your drugstore been held up?" So this was a determining factor in her making a decision whether or not she would work my pharmacy.

I thank you very much.

Senator SASSER. Thank you, Ron. One thing occurs to me, you made the statement that 75 percent of the crime in Nashville, Tenn., is drug related. I would expect there is a direct correlation between the statistic that I recited earlier. That is, that robberies have increased 29 or 30 percent in the past 10-year period and burglaries were up 44 percent in the last 10-year period. I have a hunch that if you could t. a graph and just trace that out, there would be a direct correlation between the use of drugs, the increased use of drugs and drug addiction over the past 10 years and the increase in robberies and burglaries.

Mr. FELTS. Sure. And as I said, Jim, how many of those could you and I afford on a daily basis?

Senator SASSER. Sure. Well, given your unfortunate experiences, how do you visualize your future or put it in the objective sense, how do you visualize the future of a small business operator and pharmacist, given this state of affairs?

Mr. FELTS. Well, I truly feel that pharmacy is an honorable profession and I enjoy my work. We have discussed several ways. We considered having a central dispensary, possibly Vanderbilt to Nashville, to dispense these controlled substances with very high potential for abuse. We ran into a problem, we couldn't find a pharmacist to dispense them who was going to have all these narcotics in Nashville. The dilaudid, the drug that is commanding such a high price, the only time I have dispensed it during the 6 years that I have been in practice was for a terminal cancer patient or an acute kidney stone attack.

Now, Jim, if you were a customer of mine, and you had a kidney stone attack, you are not in the business of filling prescriptions and you need not know when you leave the doctor's office that Ron doesn't carry this because this is a potentially dangerous drug. Now if you come to my drugstore and the doctor has given you four prescriptions and one of which is for dilaudid and I say, "Jim, buddy, I am sorry. I don't have these because it increases my liability here." You are more than likely not going to let me fill the other three prescriptions.

Senator SASSER. I expect that is what I would do.

Mr. TUCKER. Senator, something else we are beginning to see also, is that some stores—and you can see it even here, in the district—put bulletproof glass up between the pharmacists and their customers. And being the health care professional that is most often seen by the local community individual, that puts a barrier that is almost insurmountable. We have other stores where they have hired armed guards to almost ride shotgun. And as we have stated earlier, DEA seems to want to just turn their head at this problem and hope that it will go away. The criminal division of the Department of Justice favors our position and would like to see something done about the problem.

Senator SASSER. Well, let's hear from Mr. West and then we will get back to Mr. Felts and Mr. Tucker because there are some questions that I would like to ask and I suspect Senator Hatch has got some questions. Mr. West, why don't you proceed?

STATEMENT OF CHARLES M. WEST, EXECUTIVE VICE PRESIDENT, ARKANSAS PHARMACISTS ASSOCIATION

Mr. WEST. Thank you, Mr. Chairman.

My name is Charles West. I am a practicing pharmacist, owner of Kavanuagh Pharmacy, Little Rock, Ark. I am vice president of the NARD and I am also executive vice president of the Arkansas Pharmacists Association.

And it is in this latter capacity that I frequently travel throughout the State of Arkansas. And I see firsthand the terrible problem that we have with robberies of pharmacies. In virtually every robbery the robber want narcotics, amphetamines and barbiturates. Cash is a secondary consideration.

I could relate many horror stories to you, but I will relate briefly, only one—my own.

A couple years ago, one afternoon, about 2 o'clock, I was talking on the telephone when I felt a rough jab on my shoulder. I turned to face a cocked pistol just a few inches from my face. And my employees and customers were already lying on the floor over behind the robber.

The robber was very high on drugs and extremely nervous. He had me remove the scheduled drugs from the safe. At the same time, he was poking, jabbing me with this gun. He acted like an animal during the entire robbery. He then ran out the back door and fired his gun at a man merely walking across the parking lot. And I was terrified for a moment because my son—at that time 12 years old—was playing, had been playing just in the back of the store on the backsteps. And it was just pure luck that my son had wandered around to the front of the store because the robber apparently had ran out and fired at the first person he saw.

After catching the robber, after the police caught him, we found that he was out of jail on bond for committing the same crime only 3 week earlier. He had robbed a drugstore near mine and at that time shot the clerk.

Pharmacists, as owners of small businesses, are in unique positions. The robbers want the merchandise in the store, not the money.

Our problems are worse than even those of the convenience stores. It is obvious that the drugstore robber has no regard for human life. Thereby, the pharmacists are unique, pharmacists who are robbed are unique among crime victims.

If we do not get some help, pharmacists will have to stop stocking narcotics. Customers will be hurt and inconvenienced. Stores will go out of business.

Pharmacies that carry narcotics will need to have sophisticated security systems that are very expensive. The cash-paying customers will pay for this through increased prices.

I don't think I could afford to put a good security system in my store. In fact, I checked just recently, and it would cost about 20 percent of my annual net profit just to install and operate such a system in my store.

Senator SASSER. How is a security system going to protect you from this sort of fellow that comes in anyway, that you were talking about a moment ago, the nervous drug addict with a pistol?

Mr. WEST. It is really not going to protect us. It is one means to address this problem.

Senator SASSER. I see.

Mr. WEST. The security system I was talking about is like a panic button much like the banks have. I would alert the police that a robbery is in progress.

But something at this point in talking about the costs this involves, another cost is burglary and robbery insurance. I lost count of the times that my pharmacy was burglarized. My burglary insurance was canceled. And then, after my second armed robbery, my armed robbery insurance pretty much went through the roof. So it is a very good.

But I would like to emphasize something Mr. Tucker said earlier. The DEA has dried up the street traffic of prescription drugs and this leaves the pharmacist as the prime source for the narcotics. Consequently, the number of robberies is increasing. Local communities are having to pay for the crime through increased prices, inconvenience when the drugs are not available, and greater inconvenience when the stores close.

We need the force of the Federal Government to prevent this problem from becoming worse.

Mr. Chairman, we urge you to help us. We are small businessmen that are suffering from increased crime and we certainly thank you for this opportunity to appear before your committee today.

Senator SASSER. I have got some additional questions but I would like to defer now to Senator Hatch who may have questions of his own.

Senator HATCH. Well, thank you, Senator Sasser.

You fellows mentioned bulletproof glass security systems. Are there any other methods that you use to solve these problems?

Mr. TUCKER. Just about the only alternative is to quit carrying the merchandise. There are a number of stores in California that have signs posted in their windows that say, "We carry no controlled substances." And that is quite a disservice to those consumers in those areas. That or go out of business, it is not a very pleasant choice either way.

Senator HATCH. Are there any other possible methods that you have——

Mr. FELTS. That is the reason that pharmacy robbery apparently is so lucrative. Because I do not have the elaborate security systems that First America National Bank can afford. I cannot afford that, however, I did, in 1978, when we were having a particular rash of drugstore robberies, I did hire a policeman for a couple of days to stand guard over me.

Now this is a very unfortunate situation. I do not want to practice my profession behind a bulletproof glass or behind bars any more than you do.

What we do seek is that from the time I am licensed as pharmacist, in ordering schedule 2 or narcotic substances, I am responsible and accountable to Federal sources. When I order these drugs, it is through Federal channels. If I am held up, I am accountable to Federal authorities. However, the man that holds me up is only accountable to State authorities. We would like to see these crimes made Federal offenses.

Senator HATCH. Would you like to have this provision in 1722, passed?

Mr. FELTS. Absolutely.

Mr. TUCKER. There is one thing that one particular State pharmacy association has done which I am—each individual has to make his own choice as far as what it is—but they have actually offered firearm training to the pharmacists that want to take it. That is not a real pleasant alternative.

Senator HATCH. Do you really look forward to having a pistol or a gun around?

Mr. TUCKER. No, sir. In fact, when we testified in front of this committee a few months ago, one of the pharmacists that testified is from the inner city of Baltimore and he pointed out that 50 percent of the stores in that city have closed either due to medicaid or to the crime problem. When he goes to work, he puts a pistol on. And that is not the way the profession should be practiced.

Mr. WEST. I would like to comment, we did that in Arkansas. We had to actually have the police in the Greater Little Rock area to provide a firearm training school for pharmacists. You know, and I certainly do not subscribe to that. To me that is appalling that we had to go to those extremes, but at that time it did help. Just the publicity that the pharmacists are being trained to have firearms, but it is ridiculous. And when you cannot go and practice your profession——

Senator HATCH. Are there any other methods that you use?

Mr. TUCKER. No, sir, not that I am aware of.

Senator HATCH. Of the 50,000 or 30,000 pharmacies that you represent, have many of them put in this type of a security system with bulletproof glass?

Mr. TUCKER. I only know of few of them but then if a patient has some questions about the medication that he is going to be taking and would like to speak with the pharmacist about it, this is part of what independent pharmacists pride themselves on which is patient consultation. If the patient looks up and sees this bulletproof glass up there, he is going to say, "Well, there is no way I can talk to that guy, so I am going to leave."

Senator HATCH. This is an expensive process, isn't it?

Mr. TUCKER. Yes, sir, it is. And with the 3½-percent profit margin, it is difficult to go to some of these elaborate methods of preventing crime.

Senator HATCH. Well, would your profitability increase or decrease if you stopped carrying controlled substances?

Mr. TUCKER. It would decrease.

Mr. FELTS. It would decrease because you are not going to come to me with three out of your four prescriptions and then drive across town to get the other one. You are going to go where you get them all.

Mr. TUCKER. So you would be losing customers.

Senator HATCH. I think that is all I have.

Senator SASSER. Thank you, Senator Hatch.

Senator HATCH. May I ask you one favor, Jim, I would like to include in a copy of my statement.

Senator SASSER. Yes; without objection, your complete statement will be included in the record.

Gentlemen, you may have answered this question, but I want to get it all out on the table and make sure that I understand it completely. What in essence can the Drug Enforcement Agency do that it is not doing to better assist and safeguard pharmacists? I know that you were critical of the agency, Mr. Tucker, and I just wondered what they can do.

Mr. TUCKER. Well, sir, to briefly give you some history of that, 10 years ago when the Controlled Substances Act was passed, we were strongly in favor of this because it would help reduce drug abuse because all the narcotics and products that would be scheduled drugs would be controlled from the time of manufacture until the actual time of distribution. However, we said in 1970, when you do all this and when you dry up the truck stops and all this, then that is leaving only one source and that is going to be the pharmacist. And that is what we are seeing today.

The mere fact that making it a Federal offense is a deterrent effect to begin with. It is not going to stop all of it. It is not a panacea. I do not think that anybody thinks that it is. But if they know that after they have gone and robbed a drugstore that 1, 2, or 3 days later, if they are not caught by the local officials that either the FBI or DEA is going to be brought into the case to help because it comes under

Federal jurisdiction. Then some of those people are going to say, "Well, maybe I will just try to find the drug on the street and work a little harder." And then there is also the Federal court system. So that when word gets out on the street that when they get caught that they are going to be sent to the Federal penitentiary, it is not a real pleasing proposition for them.

Senator **SASSER**. So in essence what you are saying is that the greatest thing we could do is make it a Federal crime to take these controlled substances illegally?

Mr. **TUCKER**. Yes, sir, as Ron pointed out they are controlled all the way down to the point of being dispensed. If one of us dispenses them incorrectly then we are held accountable. if the doctor misprescribes then he is held accountable to Federal authorities, but if somebody comes in and robs you that fellow is not held accountable.

Mr. **FELTS**. We are asking that they be held at least as accountable as we are as professionals. If I give you one I am accountable to the Federal authorities; however, if someone comes in with a gun and takes all of them, they are not accountable to the same sources.

Senator **SASSER**. Well, that seems like a gross inconsistency. I have to agree with you.

Well, gentlemen, I want to thank you for appearing here this morning and giving us the benefit of your views, your experiences, and I would like to say to you, Ron Felts and your colleague from Arkansas, apparently it takes a lot of courage to be in the retail pharmacy business these days. And I wish you well. And I think you have done a very excellent job of telling us just precisely what the difficulties are in the retail drug business or retail pharmacy business. Your testimony has been most helpful to us. Thank you very much.

Mr. **TUCKER**. Thank you, Mr. Chairman.

APPENDIX XII

[From NARD Journal, January 1982]

HANDGUN SAFETY

(Advice from the National Rifle Association and National Sheriffs' Association)

> *Firearms can be dangerous. If you keep a pistol in your store, learn to use it properly and safely so that it doesn't endanger you, your staff, or your customers.*

The epidemic of robberies and attempted robberies of pharmacies has driven many pharmacists to acquire weapons for the protection of their stores, their staffs, and customers.

"After nearly 50 years in law enforcement, I firmly believe in the right of all law-abiding citizens to keep weapons in their homes and places of business," says Ferris E. Lucas, executive director of the National Sheriffs' Association in Washington, D.C. "I also believe that it is the duty of everyone who acquires a firearm to become familiar with proper firearms safety.

"Firearms can be dangerous. I have some concern about druggists' acquiring weapons. Failing to qualify themselves with those weapons can pose a threat to their safety and the safety of their employees and customers."

If you own a handgun or are considering getting one, study the following rules for the safe handling of firearms, presented by H. Wayne Sheets, director of education for the National Rifle Association in Washington, D.C., and by Mr. Lucas.

CHECK THE LAWS FIRST

Before you buy a firearm, carefully check all applicable laws in your locale relating to the purchase, ownership, keeping, or carrying of firearms. Laws vary widely from state to state and even from county to county. Pharmacists, like other community leaders, must be especially careful to comply with the law.

CONSIDER THE OPTIONS

Buy a handgun the same way you buy any other product, such as an automobile, television, or lawnmower. Carefully consider the available options before you decide.

Two types of handguns—revolvers and semi-automatic pistols—have been in use for many years. Both have such options as single or double action, barrel length, caliber, weight, type and size of grip, and fixed or adjustable sights. In considering the pros and cons of each, you should consider safety as well as effectiveness. Pick the type you understand best and feel the most confident with.

Also consider the cartridge your handgun takes. The caliber designation is simply the size of hole in the barrel. There are many different cartridges of the same caliber—some interchangeable and some not. You can use .44 Special cartridges in .44 Magnum revolvers, but you cannot use .44 Magnum cartridges in .44 Special revolvers.

The more powerful cartridges, often called magnums, produce higher striking energy, greater range and penetration, and higher recoil. The benefit of higher energy must be balanced against the greater difficulty of controlling the handgun. The increased recoil can reduce control as well as accuracy.

The bullet is that part of the cartridge that travels down the barrel and through the air to the target. There are many types, including soft point, hollow point, wadcutter, full metal jacket, and metal piercing. While the striking energy might be the same for all, the effect on the target is different for each one. You should understand the effect of the bullet you choose.

The local sheriff or police department can also offer a great deal of information on firearms, to help you choose your gun and become familiar with its capabilities.

LEARN TO HANDLE IT SAFELY

Having selected a handgun, you should learn as much as possible about its function. Ask for a demonstration of its function and proper handling at the gun store. Study the manufacturer's instruction manual which accompanies the firearm. You may want to attend a National Rifle Association basic pistol marksmanship course. You can also get the *NRA Basic Marksmanship* (Catalog # ASD-00110) and *Home Firearm Responsibility* (Catalog # ASF-00560) manuals for 50¢ each from the NRA Service and Catalog Department, P.O. Box 37298, Washington, D.C. 20013.

GET QUALIFIED INSTRUCTION

After you have learned to handle your firearm safely, you are ready to learn the basic skills of marksmanship. It is best to seek out an NRA Certified Instructor, says H. Wayne Sheets.

Be sure you understand the rules and regulations of the particular range you are using. Many ranges have these rules posted. If they do do not, seek out the range officer in charge and have him explain them to you. If you shoot on other than an established range, be sure you first have the permission of the property owner and be especially careful that the backstop behind the target will stop the bullets without any hazard of ricochet.

THREE PRIMARY RULES

Whenever you handle a firearm, Mr. Sheets emphasizes, you should *always:*

Point the muzzle in a safe direction.

Keep your finger off the trigger until you intend to shoot.

Keep the action open and unloaded. Keep it open at all times when you are handling the gun. If someone hands you a firearm, ask him to open the action before you take it.

Strict adherence to those rules will develop habits that build confidence in your ability to handle firearms safely and effectively. The best way to develop these habits is to treat every firearm as if it were loaded.

Proper grip and body position are two of the basics your instructor should teach you. You should learn the proper methods for sighting and aiming, trigger squeeze, breathing, loading and moving into position, unloading, and rhythm, and you should practice them over and over.

PRACTICE, PRACTICE, PRACTICE

Once you have learned the fundamentals of marksmanship, you are ready to practice on your own. Regular practice will maintain your familiarity with your handgun and will increase your proficiency.

Even after you are a competent marksman, continue to fire at regular intervals to maintain your skills.

CLEANING, STORAGE, AND TRANSPORTATION

With proper cleaning and maintenance, your handgun should last a lifetime and be functionally safe. The first step in cleaning is to be sure the firearm is unloaded and all ammunition is stowed away from the cleaning area. Check the manufacturer's recommendations about cleaning and maintenance. If the manual is unavailable, you can probably write the manufacturer for another copy. Firearms that are not operating properly should be turned over to a competent gunsmith or returned to the manufacturer for repair.

The key to safe transportation is to unload the firearm and case it separately from any ammunition. Be sure to adhere to all laws concerning transportation of firearms in your jurisdiction.

When your handgun is not in use, store it separately from the ammunition. Keep both under lock and key, out of reach of children and others who may not know how to handle them properly.

ARE YOU AN EASY TARGET FOR PHARMACY CRIME?

Technically, your store's security can be beefed up enough to keep any burglar from breaking in. Unfortunately, if you do that without also making it more difficult and less profitable to rob your store by walking through the front door, you'll probably just increase your chances of being hit by an armed robber.

Following are some tips for strengthening your store's defenses against either burglary or robbery. Some tips work for just one of those crimes and some are effective against both. Many are common sense and inexpensive—defenses that no business should operate without.

If these suggestions fail to relieve your feelings of vulnerability, you could, and probably should, consult a security expert. Your local police may well provide this service. Beware of hiring security firms whose sole business is to sell expensive equipment.

DELAYING TACTICS

It's been estimated that many burglars, if delayed in their attempted entries for four minutes or longer, will give up. Even if you don't feel you can afford expensive, fortress-like defenses for your store, you can strengthen windows, doors, walls, and roofs enough to make the prospective burglar have to work very hard to get in—and perhaps give up and look for an easier target.

To delay or prevent a burglar's entry, look at these areas and increase security as necessary:

Windows—usually the weakest point in a store. In back and side windows, use break-resistant glass or securely mounted steel bars. If you use bars in a window that's wired to an alarm, mount the bars inside the windows; the burglar must then contend with them after he has set off the alarm.

Anchor window frames securely to the interior structure to prevent their being pried loose. Locks on windows should be located where they can't be reached and opened by breaking the glass.

Display windows should be of break-resistent glass or should be fitted with rollback mesh or metal sashes.

Where you don't need the window for ventilation—only for light—consider installing heavy glass bricks.

Clean windowsills regularly to increase the likelihood of getting fingerprints from burglars.

Doors—locks, hinges, frames, and the doors themselves should be as resistant to forced entry as possible. Use only deadbolt locks requiring a key (preferably double-cylinder locks, requiring a key on either side) and make sure the bolts extend far into the solid part of the structure. Pin tumbler locks with at least five pins provide the best security.

Hinges should be inside to prevent their being dissembled. If outside, they should be sealed.

Door frames should be solid to resist prying. Burglars have been known to fit an automobile jack horizontally across the framing and expand it until the lock opens.

Doors should be sturdy—of either solid wood that is at least 1¾" thick, or break-resistant glass. Fit side and back doors with a sliding metal bar across the framing. Double doors should be flush-locked with long bolts.

Roofs—usually easy to punch through. Consider reinforcing the roofing material with 11- or 12-gauge wire mesh the next time you resurface the roof. Eliminate skylights or reinforce them with the same wire mesh or steel bars.

Walls—brick and cinder usually keep burglars from knocking a hole in a wall. Reinforcing weaker walls is expensive; ¾" plywood securely mounted from the interior would probably be the least expensive approach.

If your store shares a common wall with another store or building, check their security, too; it might be easy for a burglar to enter your store through the wall of a neighbor.

REMOVE HIDING PLACES

Outside and inside, make it easy for police and passersby to see what's going on in and around your store. Remove potential hiding places outside—stacked boxes, high shrubbery, and so on. Make sure the building is well lit after dark, especially from within.

Plan your store layout to discourage potential thieves and to make it easier to catch those who aren't deterred. Make sure the prescription counter and drug storage area are clearly visible from any point within the store and from the display window. Don't crowd the window with vision-blocking signs. Keep display racks below eye level. Elevating the prescription area improves visibility in both directions. Keep the prescription area lighted at all times, with several lights over the area wired so they can't be turned off.

Strategically placed mirrors can discourage robbers by making it easy for employees to observe all movement within the store. You can attach convex mirrors to walls, columns, and corners. One-way mirrors, allowing staff to observe the store from an elevated office area, also enable them to safely phone police if they see a robbery in progress.

STORE DRUGS WITH ROBBERS IN MIND

You can make it difficult for after-hours burglars to get large quantities of drugs from your store by not keeping all controlled substances in one location, by keeping them securely locked up, or by keeping stocks low. Whatever steps you take, publicize them—in an effort to discourage the armed robber as well.

If you disperse drugs, make sure that labels aren't visible at a glance. Don't place controlled drugs in logical alphabetical order on the shelves. Store reserve stocks elsewhere—preferably in a safe.

Your safe should be unmovable—bolted to the floor, set in concrete, or weigh more than 400 pounds. Never have a safe on wheels. If no safe is available, store stocks in a hidden, non-removable, locked container.

Open the safe only to replenish stock, then promptly close it again. Limit the number of people who know the combination; change the combination every time an employee quits working at your store, even if you think he didn't know the combination. Don't write the combination down; or, if you must, keep it off the premises.

One defense against both robbery and burglary is to keep stocks of controlled drugs to a minimum and to publicize the fact that you have done so—by word of mouth, signs in the store, and any other means you can think of. Do all you can to get thieves to see your store as not being worth their effort.

Watch the security in your receiving area. Accompany all deliverymen when they are in the storage area. Don't leave packages unguarded or in an unsecured area. Put all packages of incoming drugs into reserve stock storage immediately.

ALARM SYSTEMS

Useful primarily for burglar prevention, alarm systems are available in two basic types—local and central station. The less-expensive local system just sounds an alarm or sets off floodlights when activated and depends on having someone in the vicinity to hear the alarm and call the police.

Central-station alarms automatically signal the police or a private protection agency. Because they are usually silent, they don't alert intruders, making it more likely they will be caught.

You can also use a "panic" button with a central-station alarm, to let an employee clandestinely signal that a robbery is taking place. Put panic buttons in several different places in the store so that there is one available where you need it.

TRAIN EMPLOYEES THOROUGHLY

Make sure your employees are security-conscious. Train them to watch for suspicious people or activity, teach them how to respond in the event of a robbery, and make someone responsible for going through the security checklist at closing time.

Instruct employees to greet everyone who comes into the store and to be especially courteous to anyone who looks suspicious. The last thing a robber wants is to be recognized. If you approach a suspicious-looking character and say, "Hi, don't I know you from somewhere?" You might make a potential robber change his mind.

Teach your employees that the most important thing for them to do in a robbery is to *keep innocent people from being hurt or killed.* (See the box on page 9 for tips on what to do during and after a robbery.)

Establish a routine checklist for closing time, making sure someone trustworthy is responsible for such duties as:

Turning on appropriate lighting;
Removing expensive items from display windows;
Checking carefully to be sure no one is hiding in the store;
Checking all door and window locks;
Leaving cash register open;
Setting the alarm system.

LEARN MORE PREVENTIVE TECHNIQUES

The National Institute of Law Enforcement and Criminal Justice has published a 117-page manual of techniques that small business owners can use to reduce losses through robbery, burglary, shoplifting, and emeployee theft. The book includes a guide to economical and reliable equipment—locks, lighting, cameras, safes, and so on.

The book, *Security and the Small Business Retailer* (stock number 027-000-00765-1) is available for $5 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Deterring Pharmacy Crime—A Community Approach

You can help combat pharmacy crime in your community by establishing a network of pharmacists and other concerned citizens. A combined effort to deter crimes can improve your odds for survival by making pharmacy crime in your area more difficult and less profitable.

Community pharmacists and others—police, courts, elected officials, other businesses, news media, and the public—can form a committee to develop, supervise, and lead a program designed to deter pharmacy crime, protect lives during robberies, and make post-crime capture more likely. It can work.

WHO SHOULD BE INVOLVED?

Begin with the formation of your committee. It should include local pharmacy leaders and the police. No program can fully succeed without the full support of and participation by the police. Also consider other concerned groups, such as wholesalers.

This committee has two responsibilities: leadership and communication. Leadership includes developing the program, monitoring progress, adapting when necessary, and keeping the program going. Communication is a two-part process: providing information to program members and serving as liaison with the public.

TAKE ACTION

There is no instant solution to the pharmacy crime epidemic. Be prepared for an investment of time, energy, and—to some extent—money.

In light of the needs and circumstances in your community, consider such activities as these:

Negotiate with area wholesalers for their help in keeping stocks of controlled drugs to a minimum. Wholesalers' business practices—volume discounts, infrequent delivery schedules, and refusing to accept returns of excess stock—often contribute to accumulation of excessively large stocks.

Negotiate with insurance companies to discount rates for security improvements, and with security device wholesalers for volume discounts.

Establish cash rewards for information leading to the capture of criminals victimizing pharmacies.

Gather data on crimes as they occur—both to determine your program's effectiveness and to spot possible patterns of theft. Chart simple facts about each case, including time of day, day of week, point of entry (burglary), etc.

Work with the police on specific strategies, such as increased uniformed presence in and around pharmacies, shortened response time to calls, and extra attention to post-crime investigation. If resources allow, police could form a special intelligence unit for pharmacy crime, compiling information on organized groups or repeat offenders with a proven affinity for pharmacies. This unit could also be a pharmacy crime clearinghouse, coordinating data from police narcotic and burglary/robbery units and from other sources such as hospitals, poison control centers, etc.

Encourage pharmacists to improve physical security in their stores. The police may conduct security checks of individual stores to point out weak areas. They might also offer seminars on store security for pharmacies and other small businesses.

COMMUNICATION

It is vital that two groups regularly receive information from the committee—local pharmacists and the public. Here are some specific suggestions:

Develop brief evening seminars for local pharmacists. Tell them the variety of things they can do to fight pharmacy crime. Discuss arrangements the committee has made with the local police and what assistance to expect from them, the relative merits of available security devices, burglary prevention techniques, and what to do in the event of an armed robbery. Many of these seminars can be conducted by the police. Publicize the seminars with mailings to area pharmacists. Always make sure they know that the seminars are organized and sponsored by their anti-crime committee.

Develop close relations with the local news media. Enlist their help in publicizing your efforts. Criminals also watch TV and read the papers. If they hear that pharmacies have united to fight back and that police are bearing down on pharmacy crime, criminals may look for easier targets.

Continuously inform public officials of what the committee is doing. If they support your efforts, that may help open some doors for you.

Keep a mailing list of local pharmacies to keep them informed of committee activities and results, as well as any other ideas and developments that may help them in their fight against crime.

CUSTOMIZE YOUR PROGRAM

Develop your program with an eye to local circumstances. Adapt any ideas presented here so that they work in your community.

The struggle for federal legislation is only part of the fight against pharmacy crime. Pharmacists can do much to help themselves.

WHEN THE WORST HAPPENS: WHAT TO DO DURING AND AFTER A ROBBERY

In any armed robbery, the most important thing is to avoid any action that might result in the injury or death of innocent people. But you can also do several things to increase the chances that the police will catch the robber. Share these tips with your employees and emphasize their importance:

Cooperate with the robber. Tell him you will cooperate with him. The robber has the upper hand; keep quiet and don't make him angry.

Keep as calm as possible.

Be careful not to startle the robber. Keep your hands in plain sight. If there is an employee working in another room or if you know of anything else that might surprise the robber before he leaves, tell him about it.

Do not lie to a robber by telling him that someone is coming when it is not true.

Observe the robber for identifying characteristics, but don't stare at him obviously. Note his height, weight, race, clothing, hair, eyes, scars, accent, and so on. If there is more than one robber, focus primarily on only one to avoid confusing yourself.

Focus on the weapon so that you can describe it to police.

Carefully note anything the robber touches with bare hands and remember not to touch or disturb the objects or the area later. They may yield fingerprint information.

Remember what the robber takes.

Remember the robber's method of escape. If you can do so safely, get a look at the getaway car and note the direction it goes in. Write down the license number if you can get it, as well as a description of the car.

After any robbery or burglary, follow these procedures:

Call the police immediately. Chances of catching the robber are many times greater if the police are alerted without delay.

Don't touch or disturb anything.

Give the police a detailed list of what was stolen. The more precise the list and descriptions, the better the chance of catching the robber and perhaps recovering the loot.

Notify your insurance agent.

If any controlled drugs were taken, submit a completed DEA-106 form to the appropriate regional office of the Drug Enforcement Administration.

[From NARD Journal, September 1980]

PHARMACY SECURITY IS MORE THAN A STATE OF MIND

> *"Burglaries are usually crimes of opportunity. If you make it easy for someone to burglarize your store, chances are, someone will. So don't make it easy. Make it risky and unrewarding."—(LEAA)*

As an independent retail pharmacy owner, you are a prime target for burglars—criminals who forceably enter your store when it's not open for business. Though not as dangerous and violent as robbery, burglary is pharmacy's most troublesome crime.

There are four major crime categories committed against pharmacies: armed robberies—by far the most brutal; burglary—which outnumbers armed robbery by five to one; shoplifting—which usually involves small items of lower value, but can add up to intolerable levels if left uncontrolled; and internal employee theft—the most difficult to detect and control.

Since the NARD Journal covered armed robberies in its January and March editions, it is time to examine the next of the big four: burglary.

BURGLARY

Pharmacy burglaries are on the increase. The total number reported has jumped from 7,907 in 1975 to 12,895 in 1979. That means that last year there was, on the average, a pharmacy burglary committed every 40 minutes around the clock, day in and day out!

Sadly, of the burglaries reported, only one in six results in arrest and conviction.

The Law Enforcement Assistance Administration estimates that more than 70 percent of retail burglaries during 1979 were committed by amateurs—down from 85 percent in 1975. This proves that most burglaries are crimes of opportunity. LEAA also holds that if more amateur burglaries could be delayed four minutes, they would be abandoned.

Semi-professional burglars commit approximately 20 percent of the thefts. They present the second greatest risk because they know the best methods for breaking and entering and usually have means of disposing of drugs and other merchandise quickly and profitably. Semi-pros make their own opportunities and are capable of penetrating all but the most secure establishments.

Professional burglars are paying increasing attention to pharmacies because of the exorbitant prices they can obtain for controlled drugs on the street. For instance, 100 4-mg dilaudid tablets, wholesaling for under $20, have a street price of approximately $5,000, depending on geographical location. So, professionals are a great long-range threat, although they commit only 10 percent of reported burglaries. They can target vulnerable and lucrative victims precisely and know the tricks for bypassing alarm systems, opening safes, picking locks and disposing of loot. Alarms and other passive measures are effective against professionals only because they slow them down and serve to decrease the reaction time of authorities.

Interestingly, both pros and semi-pros frequently use an additional refinement: insiders who know the vulnerabilities of stores and can pinpoint what is kept and where. Why should a thief spend precious time searching when he can get an employee to point out locations of drugs and cash?

In this regard, in approximately one-third of reported burglaries, thieves entered through windows or doors which "someone had left open."

ALARMS

Alarms are basic to all security systems. In fact, it is almost impossible to buy theft insurance unless a store is protected by an acceptable alarm system.

TABLE 1.*—*Law enforcement reaction time and apprehension rate*

	Percent
30 seconds or less	100
1 minute	90
2 minutes	75
4 minutes	50
10 minutes	20
1 hour or more (forget it)	1 in 6

*Information based on studies by Los Angeles and St. Louis police departments.

There are two categories of alarm systems: local systems and central-station. Local systems make noises which can be heard in the immediate vicinity of the pharmacy being burglarized. If a police officer or a passerby happens to hear the alarm, response might be in time to catch the would-be thief. The second probability is that the noise of the alarm might be effective against amateurs, but a pro or semi-pro would probably snip the wire before setting off the alarm and go on about his business.

Central-station systems are more effective. They make no sound, transmitting their messages silently to police stations or other security operatives. More expensive than local systems, central-station systems are often more than worth the extra cost. Further, they can be effective against armed robbers. For this reason, each central-station system should have several points of activation. Then, if you or your cashier are being threatened by an individual with a weapon, people in other parts of the store can "push the button."

Alarms are important; however, they can't do everything. In addition to effective alarm systems, store owners must practice good security if they are to protect themselves against burglaries.

Precautions, checklists, security checkoff procedures, locks, steel bars and other measures are common sense and within the financial reach of most store owners. If a pharmacist has the funds to finance more elaborate security systems such as sound-activated alarms, random lacing of security circuits in walls, and other sophisticated equipment, he may do so. However, costs should be weighed against needs.

Preventive measures, such as those prescribed here, are designed to eliminate those 70 percent of thefts performed by amateurs. Keep in mind when installing or improving any security system, the more vulnerable your store is, the more apt it is to be burglarized.

ACTIONS FOLLOWING BURGLARY

Notify police—Avoid touching or moving anthing.

Do not open for business—Give police and other investigators ample time to check for fingerprints and other clues.

Cooperate with police—Above all, stay clear and let them work. Answer their questions as completely as possible. Do not become disgusted if they fail to exhibit the "appropriate" air of concern. Remember, they are professionals who probably investigated the same type of burglary yesterday; in some cases the work of the same burglar.

Take inventory—As soon as the police leave, or while they are on the premises, if possible, take inventory to detemine what is missing. Be as precise as possible.

Notify your insurance company—Again, be as precise as possible. Stress that the inventory of missing drugs and merchandise is preliminary and may be subject to change.

Notify the Drug Enforcement Administration—If the agency sends an investigator, be as cooperative as possible.

TIPS ON PREVENTING BURGLARY

(Recommended by Law Enforcement Assistance Administration)

Lock up—Appoint a responsible employee to secure the store at the end of the business day and a second one to check the individual assigned to secure the establishment. Devise a security checklist and a sign-off form. Require both lockers and checkers to initial dates and times various items on checklist are secured. In a study involving 313 burglaries in San Francisco, 22 percent of entries were gained through unlocked windows and 7 percent through unlocked doors.

Include bathrooms, storage areas and closets on the checklist—Make sure no one is hiding, waiting for you to depart so he can burglarize your store.

Inspect your building regularly—Keep surrounding areas clear of weeds, debris, boxes and other hiding places. Ensure that areas are appropriately fenced. An 8-foot, chain-link fence topped by two strands of heavy barbed wire, with a lockable gate, is considered minimum. Areas should be lit by floodlights during hours of darkness.

Check doors and windows—Windows are the weakest links in physical security. Glass should be break-resistant or covered by case-hardened, steel bars. Do not overlook unused windows: Thieves entered a Pennsylvania pharmacy recently through a window that had been boarded up more than 50 years and made off with drugs and equipment worth over $10,000. Door glass should be break-resistant or covered by roll-back, steel mesh—display windows likewise. A door's weakest parts are locks, hinges and frames. Make sure yours are secure.

Skylights and air ducts—Skylights should be eliminated. They serve no useful purpose in a modern store and are very difficult to secure. Air ducts should be covered by case-hardened, steel bars.

Check all locks—All locks should be dead-bolt, with bolts extending well into the basic structure. Three-to-seven-inch bolts provide the best security. Back and side doors should be secured by sliding iron bar fasteners.

Rx counters—Make sure your Rx counters are visible from outside the store 24 hours a day. This means keeping center-aisle shelves low or elevating Rx counters. Ads in display windows should either be high enough or low enough to permit clear visibility of Rx counters at all times. Keep Rx areas well lighted, particularly during nonbusiness hours.

Cash registers—Keep cash registers visible. If night deposits are impossible or impractical, hide the cash outside the cash-register area in a place known only to you, or take it home with you. Because it was raining the evening before, the Pennsylvania pharmacist mentioned earlier had more than $1,000 in his register the night he was robbed. All gone!

Safe combinations and keys—Combinations to drug safes and keys to pharmacies are sacred trusts—protect them. Change combinations every 90 days minimum and every time an individual who knows a combination leaves your employ. Memorize combinations; don't write them down. If you absolutely must write them down, keep them off premises: not in you wallet or some "clever" place such as taped to the bottom of your cash register drawer. Keys should be numbered and a record kept of who has which key. When an employee leaves, collect his key.

Keep receiving areas secure—Never leave deliveries sitting on loading docks—store them immediately.

Reserve drug supplies—Drug stocks in Rx areas should be kept to the minimum consistent with good management. Extra stocks should be stored away from the Rx area in secure, locked containers.

NO ROOM FOR HEROES DURING ARMED ROBBERY

There is absolutely no room for heroics during armed robberies, particularly robberies involving controlled substances. Even though you might want to be a hero, forget it. That is not the game for pharmacists and drugstore clerks to play when armed robbers come calling.

"Give up the drugs. Give up the money," advise law-enforcement officials. "Even write the guy a check if he asks for it," adds Kentucky's Commonwealth Attorney Larry Roberts.

Giving up drugs and money, however, does not mean giving in to crime. There are many ways that a robbery victim can help authorities capture suspects and get convictions later.

STAY CALM

Eileen Dumouchel, the wife of NARD's president, Paul Dumouchel, was robbed on Dec. 13, 1979. This was the Dumouchels' tenth armed robbery since they went into business. They are veterans. "Be as calm as you can," advises Mrs. Dumouchel. "Although robberies are emotional experiences and you might like to run, you cannot. So, look at the robber as closely as possible. Notice how he or she is dressed. Note facial characteristics, hair color, complexion, height, approximate weight, any distinguishing scars, moles or unusual markings. Ask yourself what kind of weapon the robber is pointing at you. Is it an automatic, revolver . . . a shotgun? Most of all, stay calm."

After you have been robbed, your first inclination is to call the police, but don't. Your first step should be to lock all the doors—front, back and side. This will prevent the robber from re-entering the store.

Then, you call the police.

Some robbery victims have successfully resisted armed robbers. They were lucky. A Boston pharmacist recently shot and killed two would-be robbers, and a North Carolina man shot it out with success. But, such action is too dangerous, particularly if you are not a firearms expert.

Calmness is the key, however. According to Patrolman Keith Howard of the Lexington, KY police force, "We had a call from a Begley drugstore worker reporting a holdup. She was so hysterical she couldn't tell the answering officer where the business was located.

"We had to send units to every Begley's in town to find the right one. This delay gave the suspect time to get off the streets," he pointed out.

HAVE DESCRIPTIONS READY

After you have reported a robbery, a patrol officer will probably arrive first. This officer will want to know many facts, but certain features about the robber should stand out in you mind if you examined him closely enough.

Was the robber male or female? White, black, or other minority? And what about facial hair, scars, tattoos, silver or gold-capped teeth?

After obtaining the basic information, the patrolman will radio it to other officers who will scour the general area for suspicious-looking people. Frequently, the police are able to pick up suspects in the vicinity of the crimes, if the victim has been able to give the police a few facts to go on.

Clothing descriptions are very important. Was the robber wearing a sweater, a green fatigue jacket, or a sportscoat? A hat, cap? Did his headwear sport an insignia?

WATCH THEM LEAVE

Always observe the escape route the robber takes. If you see him leaving in a car, remember what color it is. Remember its make, body style and model year if possible. Write down the license number and state of registration if you can. Was the car damaged in any way?

If you can, see if there was someone waiting for the robber in the car. Was it a woman or man?

What if the robber is masked? There are still ways you can help the police, point out Detective Lawrence Andersen of Minneapolis.

"In a drugstore robbery, for example, drugs and not money may have been stolen. What kinds of drugs were taken? If we later locate a suspect and he has the property on him, then we have a good case."

SAVE ALL CLUES

Did the suspect drop a cigarette butt at the crime scene? Even an item such as that tell police what brand the robber smokes. Also, the butt may have saliva on it. If it does, crime lab experts with the state police may be able to tell the suspect's blood type—something that can be done with 80 percent of the people in the United States.

One case solved recently involved the adhesive tape that the robber had used to bind the victim. Later recovered from a trashcan, it was sent to the state crime lab. Meanwhile, officers on patrol stopped two suspicious-looking characters. There were no masks, no guns, no loot, but they had a roll of adhesive tape in the car. Lab experts compared the roll found in the car with that used to bind the victim. They matched and the prosecutor won a conviction.

BAIT MONEY

Officials advise pharmacists to keep a few marked bills or "bait money" with the denominations and serial numbers written down. Then, if you are robbed, make sure the robbers take the bait money. Police arresting a suspect can go through his wallet. If the bait money is there, they have a case.

"Never keep a gun near the cash register," advises Patrolman Keith Howard. "The temptation to go for it is too great. You have two chances of outdrawing a robber who already is pointing a weapon at you—slim and none"!

If you have a silent alarm system, use if if you have the chance. However, when Mrs. Dumouchel was robbed, the robber specifically warned her against activating the silent alarm. She obeyed. Her robber was captured two days later because she observed the robber sufficiently. She was able to describe him to police in such detail that they were able to construct an artist's conception of him and he was identified in short order.

SUMMATION

In summation, law-enforcement officials recommend that pharmacists:

Remain calm;

Memorize the appearance of the robber down to the smallest detail;

Forget the guns. You have little chance of outgunning the robber and you might hit an innocent customer or a child;

Keep "bait money" in your cash register. In some cases this will not be of any advantage because pharmacy robberies frequently involve ony controlled drugs. In fact, in Mrs. Dumouchel's case, the robber took only drugs and ignored a cash drawer full of money. Keep it available anyway;

Close all doors immediately after you have been robbed;

Try to observe the robber's departure route. Did he leave via automobile? Was he driving himself? What kind of car?

Save the rope or the tape, if you are tied up;

Above all, stay cool.

Remember, one out of five armed robberies result in death or injury to the victim, according to the Law Enforcement Agency. Do not become a negative statistic because of any rash action on your part. Money and drugs can frequently be recovered. Lives and well-being are not recoverable.

JOIN THE BATTLE

NARD is pushing with all the ammunition possible to have pharmacy robberies involving controlled substances made Federal offenses. Support our efforts by writing your U.S. Representative and your Senators. A Legislative Alert was included in January's *Newsletter* asking for your support in making pharmacy robberies a part of the Federal Criminal Code Reform bill. Join our crusade.

APPENDIX XIII

nard

FELONIOUS ASSAULT

INSURANCE PLAN

NEW

$50,000

ACCIDENTAL DEATH & DISMEMBERMENT

(INCLUDED WITH MEMBERSHIP)

Armed robbery of drug dosages almost doubled from the calendar year 1978 to 1979, increasing from 4,992,952 in 1978 to 9,428,839 in 1979. One out of five armed robberies in the retail sector, according to statistics released by the Law Enforcement Assistance Administration, U.S. Department of Justice, resulted in death or bodily injury to the victim. And in 1979 there were 1824 armed robberies of pharmacists, which accounted for 22% of all dollar losses—up from 1365 in 1978. These statistics are alarming! Effective October 1, 1980, every individual Member of NARD, regardless of age, will be covered under the Plan. This policy provides $50,000 death benefit and lesser amounts for dismemberment, when the felonious assault occurs while the Member is performing his professional duties. This important protection is a benefit of NARD membership.

APPENDIX XIV

NATIONAL ASSOCIATION OF RETAIL DRUGGISTS,
Washington, D.C., June 25, 1981.

Mr. HOWARD SUDIT,
Charleston, S.C.

DEAR HOWARD: Thank you for sending me your comments on the National Legislation and Government Affairs Steering Committee report.

I am happy to report that H.R. 2034, Congressman Hyde's Pharmacy Crime Bill now has 62 cosponsors. We are proud of the progress on this issue and are confident that we will see results in the 97th Congress!

In the area of government competition, Senator Hayakawa has begun to hold hearings in the Small Business Subcommittee on Advocacy on the topic of government competition with small business. William E. Woods, Executive Vice President of NARD, has accepted the Senator's offer to testify at one of the upcoming hearings. A copy of a letter from Mr. Woods to the Senator is enclosed for your information.

Thanks again for your comments and I hope to be able to discuss these issues with you personally in San Antonio!

With warm regards,

JOHN M. RECTOR, Esq.,
Director of Government Affairs.

Enclosure.

CHARLESTON, S.C., *June 15, 1981.*

NATIONAL ASSOCIATION OF RETAIL DRUGGISTS,
Washington, D.C.
Attention: Mr. John M. Rector.

DEAR MR. RECTOR: I received a copy of the recommendations of the Steering Committee and reviewed same.

Pharmacy Robbery: The NARD Pharmacy Protection and Violent Offender Control Act of 1981 should be acted upon with haste. I believe that making robberies, etc. will put more teeth into the crimes. With due respect for our local and state officials, people that break into or walk into pharmacies to rob and obtain drugs are treated like other robbers—if caught and are out on the street—on bond—repeating what they were doing before. I believe and hope that federal charges would prevent this.

Government Competition: Local pharmacists (community) have been voicing their concern about this over the past 8 to 10 years. Not only have we a V.A. Hospital in our community, but we have state and county health departments and DHHS (formerly DHEW or OEO) health centers.

Recently the dental and medical community joined in with their concern about such competition, the services being offered and the dollar cost. The local Health Systems Agency is studying the neighborhood health centers. However, I do not feel that they or their on site pharmacies will be defunded.

S.C. recently changed its medicaid program which will change the source of funds for these centers. Patients physician visits are being limited to 14 per year—also number of lab tests, etc. All OTC medications, except for insulin and insulin syringes were removed from the formulary. A patient can receive only four medications a month. This hurts the community pharmacists as well as the centers, but the community pharmacist does not receive extra funds to cover pharmacy expenses. Patients that obtain medication from the funded clinics will stay in-house for all medication if that clinic gives them same for a reduced price—less than our cost.

Youth Wages: Owners of pharmacies and other business receive a great deal of satisfaction out of training youth. Sometimes, I feel that they should pay me! Some are not worth hiring or training other give one a great deal of satisfaction. If the minimum wage were reduced, I feel that more of the youth could be employed and receive the valuable experience needed to obtain other jobs.

I am sorry that I could not attend the Legislative Meeting in Washington. I have attended others and enjoyed them.

With kind regards,

Very truly yours,

HOWARD SUDIT.

National Association of Retail Druggists,
Washington, D.C., March 1, 1982.

Hon. Strom Thurmond,
Chairman, Senate Committee on the Judiciary,
Russell Senate Office Building, Washington, D.C.

Dear Mr. Chairman: The National Association of Retail Druggists represents the owners of more than 30,000 pharmacies where 75,000 pharmacists practice their profession. These pharmacies fill approximately 70% of all prescriptions and serve 18 million consumers daily.

The purpose of this letter is twofold. First, to express our gratitude for section 1721 of S. 1630 that recognizes that robbery of a pharmacy for the purpose of obtaining federally controlled dangerous drugs is a matter of sufficient concern that it be included within the jurisdiction of the Justice Department. Secondly, to urge you and your Committee to reconsider and delete the requirements, of S. 1630, that "a value in excess of $500.00" be the subject of such a robbery before any federal interest is possible.

NARD has urged the Congress for more than a decade to express a law enforcement interest in robbery of controlled substances, at least comparable to current federal sanctions aimed at other methods of illegally obtaining controlled substances, including forged prescriptions for such substances, or sale of such substances, without a prescription. Present federal statutes properly reflect federal interest and the gravity of such conduct. These methods of illegally obtaining such substances are federal felonies without consideration of the value obtained in the forgery or other form of nonviolent diversion. Yet, present law provides no sanction when a robber, usually armed, violently abuses customers, employees, and the owners that we represent, in the process of obtaining controlled substances. Admittedly, we hail the fact that S. 1630 remedies the total lack of federal concern about such crimes of violence. Yet, to suggest that the Federal Government is concerned with controlled substances robbery only when a particular dollar value is involved ignores the true nature of the federal interest expressed in current law regarding controlled substances. Such a limited approach subjects the most heinous method of illegally obtaining substances to restrictions not applicable to the least heinous methods of illegally obtaining controlled drugs.

Further, if a robber takes $499.00 worth of narcotics from an NARD member, S. 1630 says that there is no federal interest. Yet, in most cities of this country when that robber, or a subsequent purchaser of the drugs, is "busted" for the sale, of these same items, or for that matter, even one tablet or capsule, in a businesslike nonviolent transaction, federal sanctions are available. In fact, in many cities across the country, agents of the Drug Enforcement Administration would be involved in the case. The typical headline about such an arrest often reads, "Federal agents arrest drug pushers in possession of narcotics with a significant street value." An illustrative transaction would be a sale of 4,200 dilaudid, 2-milligram units, one of the strongest oral analgesics, taken by a robber from an NARD member. The cost to the NARD member is "not in excess of $500.00" but they command a street value of $40 per tablet—nearly $170,000.00.

It is obvious to us, that federal policy in this matter is grossly out of line. We are appreciative that this issue is but one of hundreds involved in S. 1630. We believe in the deterrent impact of law. We agree with the DEA when it asks that we request our members to post signs that it is a federal offense to obtain controlled substances by forgery. It is a deterrent. But, what should we tell our members when they are shot, maimed, yes, and murdered, by robbers attempting to obtain controlled substances? Sorry, the Federal Government is interested in forgery, other diversions, but not brute violence to obtain narcotics.

As with many issues of the day, it often takes a personal experience or an impact closer to home to truly understand what otherwise could appear to be academic, remote, or of little significant. Perhaps, Howard Sudit's recent experience will help to enlighten or as they say, "ring the bell." I know Howard would certainly have hoped so. On October 29, 1981, Howard was murdered by an armed assailant attempting to obtain controlled substances from his Avenue Pharmacy in Charleston, South Carolina.

Prophetically, I had the occasion to speak to Howard about this very subject last spring. He was a member of NARD's National Legislation and Government Affairs Committee. After reviewing the various recommendations of the Steering Committee, Howard, in a letter dated June 15, 1981, commented on concerns about minimum wages for youth, government competition, but first and foremost, on the topic of pharmacy robbery. Howard stated:

"Pharmacy Robbery: The NARD Pharmacy Protection and Violent Offender Control Act of 1981 should be acted upon with haste. With due respect for our local and state officials, people that break into or walk into pharmacies to rob and obtain drugs are treated like other robbers—if caught—and are out on the street on bond, repeating what they were doing before. I believe and hope that federal charges would prevent this."

Such legislation has been introduced by Senator Grassley (S. 1025) and others. The heart of these measures is federal jurisdiction and mandatory penalties for robberies to obtain controlled substances, without respect to the value of the particular items. It is aimed to deter and to punish vicious criminals.

The Federal Government currently would have had an interest in anyone filling a forged prescription in Howard's store. Yet it has no law enforcement interest in the robbery that resulted in his tragic death. Had S. 1630 been current law when the murderers entered the Avenue Pharmacy, to avoid federal prosecution, all they need do before killing Howard to obtain federally controlled drugs would have been to order less than $500 worth of dilaudid, or other powerful narcotics.

The recognition of the need for federal jurisdiction in our view is unassailable. The dollar limitation is indefensible! Therefore, we respectfully request that the dollar limitation be deleted from S. 1630 when it is considered by the Senate.

The Officers and Executive Committee, as well as the staff, of the National Association of Retail Druggists stand ready to assist you, and those you designate, with this issue. We look forward to hearings on the Pharmacy Protection and Violent Offender Control Act early in the next session.

Sincerely yours,

JOHN M. RECTOR, Esq.,
Director of Government Affairs.

[From the Evening Post, Charleston, S.C., Nov. 4, 1981]

A GOOD NEIGHBOR

A tribute to Howard Sudit, the 52-year-old pharmacist who was shot to death last week, from his friend and neighbor Fred Henderson Moore, appears elsewhere on this page. A black attorney, Mr. Moore credits Mr. Sudit with being an important influence on the stability of the Wagener Terrace neighborhood when it was integrated in the late 1960s. That neighborhood, located just beyond Hampton Park in the northwest section of the city, is a lovely, quiet example of how good citizens of all races can live together harmoniously.

While there was some movement by whites to the suburbs during the '60s, many long-time residents stayed put and the black, upwardly mobile homeowners who moved in would be a credit to any neighborhood. Now, whites are moving back to the peaceful neighborhood of tree-lined streets and well-kept yards. The Wagener Terrace Neighborhood Association, in which blacks and whites actively participate, is considered one of the most effective in the city.

Mr. Moore hasn't forgotten that when he moved into Wagener Terrace, Mr. Sudit was the first to knock on his door and make him welcome. It seems so unfair, he says, that this kind, non-violent man should be brutally murdered, shot at point blank range, during a robbery attempt at his pharmacy. We despair with Mr. Moore and all the friends and relatives of Howard Sudit, whose good works clearly made a difference.

LETTERS TO THE EDITOR

VOICE OF PEACE

Outrageous, inhumane, insane and barbaric are the painful words which best describe the heinous murder of pharmacist Howard Sudit, a neighbor, friend and citizen supreme. His quiet yet sparkling personality transcended racial lines as he strove to better himself and his fellow man. Few know it before, but it merits mention here that his was the voice of peace and altruism in a jungle of resentment when people of color moved into the previously all-white Wagener Terrace where he resided then and remained until his life was taken so abruptly.

It is ironic that this gentleman of peace and sobriety was taken by the violence he rejected and despised during his lifetime. The quality of his life will stand always as a monument of inspiration to those who knew and loved him.

No measure of gratitude or praise can replace this man's life nor reduce the enormity of the tragic crime which ended his life.

It is fervently hoped and earnestly prayed that the persons responsible for this horrendous crime be brought to justice soon.

F. HENDERSON MOORE.

CHARLESTON, S.C.

STATEMENTS OF SHELDON W. FANTLE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, PEOPLES DRUG STORES, INC.; MELVIN N. RUBIN, J. & S. PHARMACY, ARBUTUS, MD.; DAVID BANTA, EXECUTIVE DIRECTOR, MARYLAND ASSOCIATION OF RETAIL DRUGGISTS; AND STANLEY SIEGELMAN, EDITOR, AMERICAN DRUGGIST

Mr. FANTLE. Mr. Chairman and distinguished members of the Senate subcommittee, my name is Sheldon W. Fantle. I am president and chief executive officer of Peoples Drug Stores, Inc., Alexandria, Va. Today I am before you as a representative of the National Association of Chain Drug Stores. On behalf of our membership, officers, and board of directors, I want to thank you for the opportunity to present our views and support for various legislative proposals currently before the subcommittee regarding the issue of pharmacy crime.

For the subcommittee's background, our association represents 162 corporations that are operating in excess of 15,000 drugstores throughout the United States. Total retail sales from our industry are over $17 billion annually, which comprises approximately 65 percent of all sales in the retail drugstore market.

Turning to the specific proposals before the 97th Congress, the question is which of these measures is the most prudent means to reach the goals of making the robbery of controlled substances from a pharmacy a Federal crime. The various legislative proposals do differ in their approach. S. 20 and S. 1339 are similar in their specifics. Both pieces of legislation would amend title 18 of the United States Code to provide that robbery of controlled substances from a pharmacy is a Federal offense punishable by a fine of not more than $5,000 and imprisonment for not more than 10 years. In addition, showing that the robbery was part of a pattern of such robberies in the locality is required.

S. 1339 would also require the value of the controlled substances taken to be over $100. We have only one objection to these bills. NACDS believes that Federal jurisdiction should not depend on a showing of previous pattern in the locality. Our association is of the view that no such precedent should be required before jurisdiction passes to the Federal Government. This requirement defeats the purpose and urgent need of the legislation. Pharmacy crime is a serious issue in and of itself without excess burdens being imposed. We believe that this condition should be removed.

S. 954 would also amend title 18 of the United States Code. The section dealing with pharmacy crime is part of larger changes proposed for title 18. The particular section relevant to today's inquiry is similar to the previously discussed legislation. Therefore, our objection to S. 954 would be the same as previously stated.

S. 1025 takes a different approach and would amend the Comprehensive Drug Abuse Prevention and Control Act of 1970. In addition to providing mandatory fines and imprisonment, the legislation provides for a series of increasing fines and imprisonment for repeat offenders and specific language regarding a robbery or attempted robbery of a pharmacy when death or maiming occurs. Lastly, the legislation provides that no sentence imposed shall be suspended or probation granted.

The provisions of S. 1025 are without a doubt very stringent. It is, however, this type of deterrent, a tough sentencing provision without mitigating circumstances, that the robbery of controlled substances calls for.

Pharmacy crime is not just an urban situation. Three times last week individuals with sawed-off shotguns were robbing our stores, a pharmacy in the State of Ohio, in the small town of Canton, Ohio.

Lastly, we turn our attention to S. 661. This legislation would also amend title 18 of the United States Code and provide for mandatory fines and imprisonment depending upon the seriousness of the offense. In addition, the legislation would establish a panel comprised of the Attorney General, Secretary of Health and Human Services, the Drug Enforcement Administration, and the Joint Commission of Pharmacy Practitioners, which includes NACDS, to review the progress made in stopping pharmacy crime.

In general, NACDS views this proposal most favorably. While our association can support, subject to previously stated objections, all of the legislative proposals discussed, we find that S. 661 is the simplest and most direct approach. The problem of pharmacy crime is addressed in a most straightforward manner. We believe that forceful action must be taken immediately by Congress.

NACDS holds the position that a strong effective deterrent to pharmacy robbery is desperately needed. Making the robbery of controlled substances from a pharmacy a Federal offense would provide such a deterrent. NACDS supports the legislation that has been introduced in the Senate.

I think we can all agree that now is the time to act to stop, not debate, the increase of robbery and violence against pharmacies. Pharmacists and consumers should not fear the threat of bodily harm. A message must be sent that Congress will not tolerate pharmacy robbery and will place the full resources of the Federal Government behind efforts to prevent its spread.

In concluding, I would like to thank the subcommittee for allowing NACDS the opportunity to express our view in this forum. I urge the subcommittee's prompt action to report out a favorable piece of legislation. Our association and its members stand ready to assist and work with you. Thank you.

Senator MATHIAS. Thank you very much. Mr. Rubin?

Mr. BANTA. If I might, Mr. Chairman, my name is Dave Banta. I would like to speak first and then introduce Mr. Rubin.

Senator MATHIAS. Surely.

Mr. BANTA. I am Dave Banta with the Maryland Pharmaceutical Association, which is the statewide professional society of pharmacists in Maryland with over 1,000 members. I sincerely appreciate this opportunity to say a few words before the committee. We will be extremely brief because of the time commitment.

On April 7 of this year, the pharmacy community in Maryland was again rocked by the newspaper headlines that another of our colleagues had been senselessly shot and critically wounded during a burglary of his pharmacy. Pharmacist Robert Kantorski was working in his pharmacy, the Ritchie Prescription Pharmacy in Brooklyn Park, Md., when two armed robbers demanded drugs. Mr. Kantorski was complying with their orders when he was shot three times. This kind of irrational violence has become all too familiar to Maryland pharmacists.

Without belaboring the point, I would like to just point out that this whole increasing trend of violent crime in pharmacies has had a profound effect in Maryland. With that, I would like to introduce pharmacist Mel Rubin to just say a few words about his personal experiences.

Mr. RUBIN. Thank you, Senator. My name is Melvin Rubin. I am a community pharmacist in Baltimore County, where I have had the distinct dishonor of having two holdups in the last approximately a year.

Senator MATHIAS. In what community?

Mr. RUBIN. Arbutus-Catonsville area. That is in addition to a couple of times through the roof and the plate glass windows in the front. It is not a depressed area. It is a middle-class area with fairly good police protection, the police not very far away.

Senator MATHIAS. I am very familiar with the area.

Mr. RUBIN. Yes, I thought you might be.

Incidentally, we have three stores in the area. This tale goes one, two, three, down the line. They are all having problems.

The paradox is that, if I fill a prescription as presented, I can make a profit. If I fulfill my professional obligation to dispense only with integrity, I take the chance of having my head blown off. Just a few weeks ago, when I was presented with an obviously forged prescription and refused to fill it, I was told in just so many words: "If I had a gun, I'd blow you away right now." The clerks in my store wanted me to fill that prescription even though a 16-year-old clerk knew it was no good.

Senator MATHIAS. It shows you how much times have changed since the day of Dr. Harry Steiner.

Mr. RUBIN. Very much so.

Until very recently, I had a phone answering device at the store which directed people to call me at home for emergency prescriptions. You cannot get a pharmacist opened at night anymore because of this and other problems. One night I got a call: "I need medicine for my girlfriend," I believe it was, "desperately, please come and meet me at the store." I said: "Well, if it's that desperate I'll come down but with a policeman." And the answer at the other end of the line was: "never mind then." With that type of a problem coming up, I disconnected the service even though I disperse my number around the neighborhood.

I could give you a lot of other examples, but essentially this is an everyday problem. The last 7 days, I received phone calls asking me if we had the drug methaqualon in stock. Florida has done a great job in clamping it down. It has gotten to a point where I just hang up because I know if the answer is yes, I do, they are either going to come through the roof or straight in the door with a gun.

Thank you for the chance to testify.

Senator MATHIAS. Thank you very much. Mr. Siegelman?

Mr. SIEGELMAN. Good morning. My name is Stanley Siegelman. I am the editor of American Druggist magazine. This is a monthly journal that goes to every pharmacy in the United States. It has a circulation of 77,000 and is published by the Hearst Corp.

In accordance with your request, I will severely curtail my statement here today. It will be short but not necessarily so sweet.

The pharmacists of this country, in my opinion, urgently need a law that would help protect them from drug-seeking criminals.

Pharmacists are targets of an unprecedented wave of violence. Burglaries and robberies against them are increasing about 10 percent annually, according to our figures. Every drug store runs a one-in-five risk of being robbed or burglarized during the course of a year.

Back in September 1980, American Druggist published the names of 50 pharmacists who had been murdered, gunned down in their own drugstores during the preceding 12-month period. In four successive issues last year, the magazine printed the names and addresses of 550 pharmacists in 31 States who had recently survived armed robberies.

We are advocating a Federal law to correct the imbalance that now exists between the vicious criminal and his hapless target, the pharmacist. In furtherance of that cause, American Druggist has worked closely with Senator Roger Jepsen of Iowa. As you saw here earlier today, we have turned over to him 163,000 signatures which pharmacists collected. They collected these signatures on a petition form which we printed in our magazine. The signatures are those of consumers, people who patronize drugstores. The petitions state our argument quite simply:

> The Federal Government gives pharmacists the unique responsibility of safeguarding drugs. Therefore, the Federal Government should protect them while they are carrying out that function.

Violence against pharmacists is forcing drugstores out of business. If this pattern is not curtailed, I foresee the possibility that controlled substances might one day have to be distributed through heavily guarded depots. The survival of the pharmacy as we know it today may well be at stake.

I wanted to say something particularly about the State of Alabama because that State took commendable steps recently by passing a very strong law pertaining to pharmacy crime. Anyone convicted of the robbery of a controlled substance in that State is subject to a minimum mandatory sentence of 10 years at hard labor without possibility of pardon, parole or suspended sentence. This law will undoubtedly benefit the pharmacists of Alabama, but it will also encourage criminals to strike at drugstores in neighboring States, where the penalties are less severe. That is why a uniform Federal approach is needed rather than a patchwork of laws that vary from State to State.

Senator MATHIAS. In analyzing the statements that are made, we may have some questions. For that reason, as I announced earlier, we are going to keep the record open for 2 weeks. We hope you will be willing to answer any additional questions.

I notice in the chart that has been placed in the committee room that it is indicated that pharmacy robberies have increased 160 percent rather than 150 percent, as I said in my opening statement. I am wondering if we can have a reduced copy of that chart for the record.

Mr. WOODS. Yes, sir, we will be glad to do that.[1]

Senator MATHIAS. Thank you, Mr. Woods. I think that is a good visual way of presenting the incidents.

You represent a widely spread chain of drugstores, Mr. Fantle. Does that chart represent the kind of experience that you have had throughout this whole area?

Mr. FANTLE. I believe that none of the States that we operate in, Senator, are immune from this type of situation, whether it be a presumably quiet State like Iowa or Ohio or a very volatile community like the one in which we have our base, in Washington, D.C.

Senator MATHIAS. What about the incidents in rural as against urban communities?

Mr. FANTLE. I brought with me Jerry Wilson, who is our corporate vice president of security and was the previous police chief of Washington, D.C. He is in the room. He would be well equipped to answer that question if you would like him to do so.

Senator MATHIAS. It is always a pleasure to welcome Chief Wilson back to the Hill. Perhaps if he could just very briefly tell us how this breaks down between rural and urban areas.

Mr. WILSON. If I can, I will do it from here, Mr. Chairman.

Senator MATHIAS. Surely.

Mr. WILSON. I think our experience in Peoples' at least in looking at the data indicates the small towns, as Mr. Fantle mentioned earlier, in Ohio and in Georgia, seem to have a pattern more than in the cities. For example, in the District of Columbia we have not—as I can recall—had a drug robbery in the last 2 or 3 years. Our pattern has been that we have seen these kinds of crimes in smaller towns and in the more rural areas where we serve.

Senator MATHIAS. I do not want to draw too many social implications from that testimony, but it would seem to indicate that, No. 1, the rural communities are not immune from the drug problem. Second, there are other alternative sources in the metropolitan areas.

Mr. WILSON. I think, Mr. Chairman, that that presumption is probably one that has a great deal of truth to it.

Mr. WOODS. Mr. Chairman, I would add that in the smaller towns many times you will often find smaller independent stores with high prescription volume, and they really are a target for these people. The criminals know that there are not few personnel in the store, and that there are many prescriptions being filled.

Senator MATHIAS. I could continue this colloquy with a great deal of interest for a long time. We have run out of time, however. I appreciate very much all of you being here.

[The prepared statements of Messrs. Banta, Rubin, and Siegelman follow:]

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[1] See chart on p. 31.

PREPARED STATEMENT OF DAVID BANTA

Mr. Chairman and members of the Committee, I am David Banta, Executive Director of the Maryland Pharmaecutical Association. The Association is the statewide professional society of pharmacists in Maryland with over 1,000 members. I appreciate this opportunity to appear before the Subcommittee on Criminal law to testify in support of bills dealing with the increasing problem of pharmacy robberies.

On April 7, 1982, the pharmacy community in Maryland was again rocked by the newspaper headlines that another of our colleagues had been senselessly shot and critically wounded during a burglary of his pharmacy. Pharmacist Robert Kantorski was working in his pharmacy, the Ritchie prescription pharmacy in Brooklyn Park Maryland, when two armed robbers demanded drugs. Mr. Kantorski was complying with their orders when he was shot three times. This kind of irrational violence has become all too familar to Maryland Pharmacists.

Several months ago, The Village Pharmacy in Gaithersburg, Maryland was robbed by an armed female who held the pharmacist at gun point while a clerk gathered the powerful narcotic, Dialudid, which the robber demanded.

The McAlpine Pharmacy in Ellicott City, Maryland was also the recent target of an armed hold-up. The two robbers held the pharmacist and store employees at gunpoint while searching for drugs. They ignored the money in the cash register and took only the drugs they were seeking.

Pharmacists in Maryland remember the death of Pharmacist David McLarty who was gunned down in his Linthicum Pharmacy by robbers after the narcotic drugs in the pharmacy.

These incidents of violence appear to be increasing annually and it has cast a deepening shadow over the practice of pharmacy.

I believe there are several reasons for this increase in violence directed against pharmacists. The quantity and quality of street-drug has apparently dryed up due to increased effective law-enforcement activity. Addicts are faced with undependable supplies of the narcotics they must have. In their minds, the robbery of a pharmacy with a weapon is less hazardous than the drug buy in the dark alley with its own potential for violence and rip-offs. These are desperate individuals. They are prone to irrational behavior and spontaneous violence. The pharmacist knows that when he or she is confronted by such an addict demanding drugs, that casual but fatal violence is a definite possibility; even as the robbers demands are being met.

The effect of all of this on the profession of pharmacy has been profound. It is impossible to talk to a pharmacist who has been in practice for only a few years who has not endured the trauma of a robbery. It is the most frightening experience you can imagine. As small businessmen, pharmacists have had to deal with the possibility of a robbery or burglary in the past. But these new crimes involving drugs and their increasing trend, represents a new and more severe threat to our professions.

The pharmacy profession is proud of the fact that it is so widely accessible to the public. Pharmacy does not have the manpower distribution problem that other health care professionals experience. The pharmacist is on every Main Street in America, providing patient information and quality pharmaceuticals to the public. Yet it is that very accessibility that is threatened. For example, in Baltimore City, it is now impossible to find a 24 hour community pharmacy. Increased pharmacy robberies during the late evening and early morning hours have forced Baltimore area pharmacists to stop this community service. Working with our Association and the Board of Pharmacy, several pharmacists have made arrangements to provide after-hour service to patients with emergency prescriptions; but they will make the special trip to open their pharmacies only if a law-enforcement officer is also present.

There are other effects. Many newly graduated pharmacists are now turning away from the practice of community retail pharmacy because of the increased potential for violence. The pharmacy schools are now approximately half male and half female in enrollment. Many of these students are choosing to enter hospital pharmacy practice, manufacturing or other areas of the profession rather than work in community practice. Yet we now have seen reports were even hospital pharmacies have been robbed by those in search of these drugs. Some community pharmacies that have been repeatedly robbed have great difficulty recruiting pharmacists to work.

Pharmacy is a public and patient oriented health care profession. Today's pharmacist is trained to interact with the public and provide valuable medication information. Unfortunately the trend in pharmacy violence has had the effect of making some pharmacists defensive. A pharmacist must constantly be on guard and watchful for the one patient who approaches with the wild-eyed look and the concealed weapon.

In Towson, Maryland, Kaufmann's Pharmacy posted a sign in its window informing the public and potential robbers that it no longer carried Schedule II prescription drugs after it was robbed twice in one month. Most pharmacists have not chosen to do this because of their desire to serve the public health. But this drastic measure is a symptom of the defensiveness I have observed in Maryland Pharmacists.

Pharmacists have now armed themselves. As I attend continuing education seminars and other pharmacy meetings, I have noted that more and more pharmacists, especially those who have experienced robberies in the past, are armed for self-protection. It is a sad commentary on our society when individuals engaged in a health care occupation in the community are forced to carry the very tools of violence for their own self-protection.

I know that there can be little disagreement about the nature and scope of this problem. I also realized that a complete and total solution for what is only one manifestation of a deeply rooted problem in our society is not within our grasp. There are, however, some measures that can be taken which will act as a deterrent to the violence I have described. I urge the Committee to support the intent of Senate Bills 20, 661, 954, 1025, and 1339. Something must be done to assist the pharmacists in this country who are quite literally, risking their lives due to the unique nature of their trade. I urge that you seriously consider mandatory minimum penalties for those convicted of pharmacy robberies. Send a message to those addicts who believe that knocking over the neighborhood pharmacy is the easy way to secure drugs. We ask you to take firm and positive action to strengthen the prosecution and penalties for those who would rob pharmacies.

Thank you again for this opportunity to testify before this Committee. I would be pleased to attempt to answer your questions.

PREPARED STATEMENT OF MELVIN N. RUBIN

Mr. Chairman and members of the committee my name is Melvin N. Rubin. I am the owner of J. and S. Pharmacy, a practicing pharmacist in Arbutus, Maryland. The problems of pharmacy robberies is more than just a growing statistic to those persons who have been at the wrong end of a gun held by a glassy-eyed addict. Twice in the past 12 months or so my pharmacy, which is in a middle class neighborhood has had unsocial calls from persons willing to risk jail for drugs—during daylights hours, in a well lit, fully exposed to walking traffic location.

Nothing in my pharmacy is inviting to an addict—it is small, the windows are completely open to view across the expanse of the building, and stores on either side have continuous traffic. Nothing is inviting except one thing—the drugs that cost me comparatively little but are worth great risk to the robber.

Our last holdup cost us about $600 in merchandise—almost completely it cleaned out our schedule II items plus select III drugs, yet it was worth the armed robbery conviction that might have followed.

Ironically, these two holdups came the same day the police made a bust in illegal narcotic traffic in the area. My problem then, is that the more effort that is used to break up these rings, the more threatening the situation becomes for those of us on the hot spot—with the drugs in stock when the need is there.

This is more than a situation where a merchant needs police protection. Being robbed for money and merchandise other than drugs means being confronted by a person who at least might be rational—might understand that pulling the trigger is going to put him in even more jeopardy. Being confronted by a person whose eyes are so wild looking that they are still clear in my mind is another problem—certainly reasoning will not help and the only thing you can do is hope he leaves, before the urge comes to squeeze. You even have to hope the police will not happen on the scene until he leaves or you can expect to go with him. If you are left able to move at all.

Certainly the situation calls for a better system of protection for pharmacies and absolutely for stiffer penalties for those caught. In the case of irrational people, the only deterrent is keeping them where they are not in contact with the population.

PREPARED STATEMENT OF STANLEY SIEGELMAN

My name is Stanley Siegelman. I am the editor of American Druggist, a monthly journal that goes to every pharmacy in the U.S. It has a total circulation of 77,000 and is published by the Hearst Corporation.

I appear today to make one simple point: Pharmacists need a law that would help protect them from drug-seeking criminals. At this time, I am not speaking for or against any specific legislation now under consideration. Rather, I'm arguing for the principle of Federal involvement.

Today, pharmacists are targets of an unprecedented wave of violence. Burglaries and robberies against them are increasing about 10 percent annually. Every drug store runs a one-in-five risk of being robbed or burglarized during the course of a year.

Back in September, 1980, we published the names of 50 pharmacists who had been murdered in their drug stores during the preceding 12-month period. The list was by no means complete. But by dramatizing the seriousness of the problem, the list had the instantaneous effect of mobilizing strong reactions from pharmacists all over the U.S. In my opinion, the country's 130,000 practicing pharmacists are more united on this issue—the need for a Federal law—than on any other problem confronting their profession.

They are, understandably, frightened. Their physical survival is at stake. Because protection at the local level is palpably deficient, they must turn to Washington for help.

The state of Alabama recently took commendable steps to protect pharmacists by passing a strong law. Anyone convicted of the robbery of a controlled substance is subject to a minimum, mandatory sentence of ten years at hard labor—without possibility of pardon, parole, or suspended sentence. This law will undoubtedly benefit the pharmacists of Alabama. But it will also encourage criminals to strike at drug stores in neighboring states, where the penalties are less severe. That's why a uniform Federal approach is needed, rather than a patchwork of laws that vary from state to state.

President Reagan, we all know, believes that the primary responsibility for prosecuting and punishing criminals lies with the states, not the Federal government. However, in a statement issued on May 26, the President said: "The Federal government can set an example for the states by establishing a modern, effective criminal justice system, including laws that will correct the imbalance that has developed between the forces of crime and their victims."

That's precisely why I am advocating a Federal law—to correct the imbalance that exists between the vicious criminal and his hapless target, the pharmacist.

In furtherance of that cause, American Druggist has been working closely with Sen. Roger W. Jepsen of Iowa. We have turned over to him 163,000 signatures which pharmacists collected on a petition printed in our magazine.

That petition states our argument simply: "The Federal government gives pharmacists the unique responsibility of safeguarding drugs. Therefore, the Federal government should protect them while they are carrying out that function."

I should point out that the signatures on the petitions are essentially those of consumers—people who patronize drug stores—people who are citizens and voters. Each petition has been signed by a pharmacist, for purposes of validation.

In 4 successive issues last year, American Druggist collected and printed the names and addresses of 550 pharmacists in 31 states who had recently survived armed robberies. The Drug Enforcement Administration (DEA) said in 1981 that approximately 96% of all armed robberies reported to DEA were reported by pharmacists.

It's clear that street crime has expanded into the drug store. An amphetamine or barbiturate can command as much as $25 or $30 apiece on the street. A couple of 100-tablet bottles could bring as much as $5,000 to a drug-dealer. Pharmacists tell us that they are held at gunpoint by criminals who actually carry a "shopping list" of the specific drugs they want.

It's ironic that when a criminal trafficks in narcotics and is apprehended, he is subject to Federal punishment. But if he is caught robbing those very same drugs from a pharmacy, no Federal punishment pertains. This is an inconsistency that cries for correction. What is needed is a law that would make drug-related crimes against pharmacies a Federal offense!

It's ironic too that the pharmacy—an institution dedicated to the mitigation of human ailments—is instead becoming a battleground. Increasingly, pharmacists are acquiring weapons to defend themselves against marauders. Dismayed by the ineffectuality of local law enforcement agencies, many have concluded that self-reliance is the key to survival. They have decided that the ability to shoot first could determine their own life or death. In effect, they have accepted the principle of the preemptive strike.

I wonder how the members of this subcommittee would feel of they had to look up from their desk each time someone entered their office, and wonder if they were about to be gunned down. That's how many pharmacists feel, each time a stranger walks through the front door of the drug store!

Of course, it's impossible, under such circumstances, to do one's job well.

The fact is, that violence against pharmacists is forcing drug stores out of business. When this happens—often in depressed areas—local residents are deprived of badly needed health services. And the social fabric suffers another painful, irreparable rip at the seams.

"Why should drug stores be singled out for Federal protection?" I am asked. "Why not gasoline stations? Food stores? Hardware stores?" The answer is that drug stores do indeed constitute a special category. They are entrusted with the handling of controlled substances under stringent Federal regulations. They render a unique service: the distribution of health-sustaining medications. If they did not exist in the currently prevailing geographic pattern, the public would find it extremely difficult to obtain medicine. If violent criminals force pharmacies to close down, drugs may ultimately have to be distributed through heavily-guarded depots—perhaps beyond the reach of many Americans. The survival of the pharmacy as we know it may well be at stake.

Another question I am asked is: "Would a Federal law really solve the problem?" I can reply only that I am not sure, but that it's worth trying. A Federal law would be especially helpful in localities where law enforcement is sub-standard. Perhaps the answer is a system in which DEA shares responsibility with state police; in other words—current jurisdiction.

It's true that Federal law applies to bank robbery—and that more banks are being robbed than ever before. But of course we have no way of knowing how many more crimes against banks would be taking place, if a Federal law did not exist.

At minimum, I believe that pharmacists should be granted Federal tax credits for installing protective and deterrent devices.

Today, gentlemen, too many pharmacists and their families live in terrible dread.

I have received hundreds of letters about pharmacy crime from every section of the country, and from every segment of the profession. The ones I dread most are the letters from widows whose husbands have been shot down. Sometimes the drug store is sold—at a loss—to a young pharmacist who is willing to risk his life for an opportunity to be independent. But more usually, the store simply goes out of existence. Human wreckage ensues. There are children who have to be raised by a bereft mother, often left with inadequate insurance compensation. There is the widow who doesn't know what to do next. Sadly enough, the pharmacist who is attacked is invariably a person known for his compassion and helpfulness to others—a bulwark of the community—an individual who learned his difficult profession by dint of great personal effort.

The independent pharmacist is not the only one who feels threatened. Large chains like Walgreen and Drug Fair are also deeply concerned about pharmacy crime, and favor a Federal approach.

In conclusion, I restate what I said at the outset: We need a law that would make drug-related crimes against pharmacies a Federal offense!

Senator **Mathias**. The hearing will stand adjourned subject to the call of the Chair.

[Whereupon, at 10:55 a.m., the meeting was adjourned, subject to the call of the chair.]

APPENDIX II

PROPOSED LEGISLATION

97th CONGRESS
1st Session

S. 20

To amend title 18 of the United States Code to prohibit the robbery of a controlled substance from a pharmacy.

IN THE SENATE OF THE UNITED STATES

JANUARY 5, 1981

Mr. SASSER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 18 of the United States Code to prohibit the robbery of a controlled substance from a pharmacy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 103 of title 18, United States Code, is amended by adding immediately after section 2117 the following new section:

"§ 2118. Robbery of a pharmacy

"(a) Any person who takes property of another from a licensed pharmacy regularly engaged in the retail dispensing in interstate commerce of prescription drugs or devices, by force and violence, or by intimidation, and such robbery is part of a pattern of such robberies in the locality, shall be fined not more than $5,000, imprisoned not more than ten years, or both.

"(b) For purposes of this section, the term 'property' means a controlled substance consisting of a narcotic, amphetamine, or barbituate that is listed in Schedule I, II, III, or IV established by section 202 of the Controlled Substances Act (21 U.S.C. 812), the value of which is in excess of $500.".

(b) The table of sections for chapter 103 of title 18, United States Code, is amended by adding at the end thereof the following:

"2118. Robbery of a pharmacy.".

II

97TH CONGRESS
1ST SESSION

S. 661

To amend title 18 of the United States Code to provide a criminal penalty for robbery of a controlled substance and to establish a commission to make recommendations with respect to the Federal effort to curb pharmacy related crimes.

IN THE SENATE OF THE UNITED STATES

MARCH 10 (legislative day, FEBRUARY 16), 1981

Mr. JEPSEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 18 of the United States Code to provide a criminal penalty for robbery of a controlled substance and to establish a commission to make recommendations with respect to the Federal effort to curb pharmacy related crimes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 103 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 2118. Robbery of a controlled substance from a pharmacist

"(a) Whoever, by force and violence, or by any intimidation, takes, or attempts to take, from the person or presence of another, any material, compound, mixture, or prescription containing any quantity of a controlled substance and belonging to, or in the care, custody, control, management, or possession of any pharmacist shall be fined not more than $5,000 or imprisoned not less than five years, or both.

"(b) Whoever, in committing, or in attempting to commit, any offense defined in subsection (a) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than $10,000 or imprisoned for not less than ten years nor more than life, or both.

"(c) Whoever, in committing or in attempting to commit, any offense defined in subsection (a) of this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without consent of such person shall be imprisoned for not less than twenty years.

"(d) If two or more persons conspire to violate any of the provisions of this section, and one or more of such persons do any act to affect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

"(e) As used in this section the term—

"(1) 'pharmacist' means any person registered in accordance with the Controlled Substances Act for the purpose of engaging in commercial activities involving the dispensing of any controlled substance to an ultimate user pursuant to the lawful order of a practitioner;

"(2) 'dispensing' shall have the same meaning as that provided under section 102(10) of the Controlled Substances Act;

"(3) 'practitioner' shall have the same meaning as that provided under section 102(20) of the Controlled Substances Act; and

"(4) 'controlled substance' shall have the same meaning as that provided under section 102(6) of the Controlled Substances Act.".

(b) The table of contents for chapter 103 of title 18, United States Code, is amended by adding at the end thereof the following:

"2118. Robbery of a controlled substance from a pharmacist.".

SEC. 2. (a) In order to assure the maximum degree of cooperation necessary for successful enforcement of the first section of this Act and other relevant statutes, the Attorney General, in consultation with the Secretary of Health and Human Services, through the Administrator of the Drug Enforcement Administration shall regularly meet, not less than four times a year, with the Joint Commission of Pharmacy Practitioners (hereinafter referred to as the "Commission"). Other interested organizations, as designated by the Attorney General, may participate at the meetings required by this section. Additionally, the Commission shall make recommendations to the Administrator and the Congress at least annually with respect to pharmacy, policy, budget, priorities, operations and management of the Federal effort to curb pharmacy related crimes, especially robbery.

(b)(1) Members of the Commission who are employed by the Federal Government full time shall perform their duties under subsection (a) without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties under subsection (a).

(2) Members of the Commission not employed full time by the Federal Government shall receive compensation at a rate not to exceed the rate now or hereafter prescribed for GS-18 of the General Schedule by section 5332 of title 5 of the United States Code, including traveltime for each day they are engaged in the performance of their duties under

subsection (a) as members of the Commission. Members shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties under subsection (a).

SEC. 3. In order to provide accurate and current information on the nature and extent of pharmacy crime the Department of Justice shall collect relevant data and include pertinent results in its annual Uniform Crime Report.

SEC. 4. There are authorized to be appropriated for the fiscal year ending September 30, 1981, and for each year thereafter such sums as may be necessary for carrying out this Act.

II

97TH CONGRESS
1ST SESSION

S. 954

To amend title 18 and the Omnibus Crime Control and Safe Streets Act of 1974, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 9 (legislative day, FEBRUARY 16), 1981

Mr. HEFLIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 18 and the Omnibus Crime Control and Safe Streets Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3146(a) of title 18, United States Code, is amended to read as follows:

"§ 3146. Release in noncapital cases prior to trial

"(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required or that such release will endanger the safety of any person or the community. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

"(1) place the person in the custody of a designated person or organization agreeing to supervise him;

"(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

"(3) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

"(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

"(5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.".

SEC. 2. (a) Chapter 103 of title 18, United States Code, is amended by adding immediately after section 2117 the following new section:

"§ 2118. Robbery of a pharmacy

"(a) Any person who takes property of another from a licensed pharmacy regularly engaged in the retail dispensing in interstate commerce of prescription drugs or devices, by force and violence, or by intimidation, and such robbery is part of a pattern of such robberies in the locality, shall be fined not more than $5,000, or imprisoned not more than ten years, or both.

"(b) For purposes of this section, the term 'property' means a controlled substance consisting of a narcotic, amphetamine, or barbiturate that is listed in Schedule I, II, III, or IV established by section 202 of the Controlled Substances Act (21 U.S.C. 812), the value of which is in excess of $100.".

(b) The table of sections for chapter 103 of title 18, United States Code, is amended by adding at the end thereof the following:

"2118. Robbery of a pharmacy.".

SEC. 3. Subsection (c) of section 924 of title 18, United States Code, is amended to read as follows:

"(c) Whoever—

"(1) uses any firearm to commit a felony with respect to which the district courts of the United States have original and exclusive jurisdiction under section 3231 of this title; or

"(2) carries a firearm during the commission of any such felony if an element of such felony is the use of violence or threat of imminent violence;

shall, in addition to the punishment provided for the commission of such felony, be sentenced to imprisonment for a term of five years. In the case of the second or subsequent conviction of a person under this subsection, such person shall be sentenced to imprisonment for a term of five years plus an additional five years for each subsequent conviction after the first.".

SEC. 4. Section 3575 of title 18, United States Code, is amended by adding at the end thereof the following:

"(h) Notwithstanding any other provision of this section if a defendant has previously been convicted in a court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States or any political subdivision thereof, of two violent felonies which are independent, he shall be sentenced to life imprisonment without parole for a subsequent violent felony conviction.".

SEC. 5. (a) Section 704 of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by adding at the end thereof the following:

"(c) The Director of the Federal Bureau of Investigation is authorized and directed to classify the offense of arson as a part I crime in its Uniform Crime Reports. In addition, the Director of the Federal Bureau of Investigation is authorized and directed to develop and prepare a special statistical report in cooperation with the National Fire Data Center for the crime of arson, and shall make public the results of that report. The Director of the Federal Bureau of Investigation shall give priority as part of the special report to the investigation of arson in housing supported by programs of or owned by the Department of Housing and Urban Development.".

(b) Subsection (b) of section 704 of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking out "this section" and inserting in lieu thereof "subsection (a)".

II

97TH CONGRESS
1ST SESSION

S. 1025

To provide penalties for persons who obtain or attempt to obtain narcotics or other controlled substances from any pharmacist by terror, force, or violence, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 29 (legislative day, APRIL 27), 1981

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To provide penalties for persons who obtain or attempt to obtain narcotics or other controlled substances from any pharmacist by terror, force, or violence, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pharmacy Protection and Violent Offender Control Act of 1981".

FINDINGS

SEC. 2. The Congress finds and declares that—

(1) robbers and other vicious criminals seeking to obtain controlled substances have targeted pharmacies with increasing frequency;

(2) the dramatic escalation of the diversion of controlled substances for illegal purposes by persons who rob and terrorize federally registered pharmacies is directly related to successful efforts by the Department of Justice to prevent other forms of diversion of such substances;

(3) Congress did not intend that terrorization and victimization of pharmacists and their families, employees, and customers should result from the aggressive enforcement of Federal drug laws;

(4) in order to address a discrepancy in Federal law, it is necessary to make robbery of a pharmacy to obtain controlled substances a Federal offense, as is the case when such substances are obtained by fraud, forgery, or illegal dispensing or prescribing; and

(5) any truly comprehensive strategy designed to curb pharmacy crime must, in cases of robbery, make available the investigative and prosecutorial resources of the Federal Government which are made available when controlled substances are obtained by other unlawful means.

PURPOSE

SEC. 3. It is the purpose of this Act—

(1) to assist State and local law enforcement officials to more effectively repress pharmacy related crime;

(2) to enhance the expeditious prosecution and conviction of persons guilty of pharmacy crimes;

(3) to assure that convicted offenders, especially repeat offenders, receive appropriate mandatory penalties; and

(4) to provide additional protection for pharmacies and pharmacists against the increasing level of violence which accompanies unlawful efforts to obtain controlled substances.

PROHIBITED ACTS

SEC. 4. (a)(1) Part D of the Controlled Substances Act is amended by adding at the end thereof the following new section:

"ROBBERY OF A CONTROLLED SUBSTANCE FROM A PHARMACIST

"SEC. 413. (a) Whoever, by force and violence, or by any intimidation, takes, or attempts to take, from the person or presence of another, any material, compound, mixture, or prescription containing any quantity of a controlled substance and belonging to, or in the care, custody, control, management, or possession of any pharmacist shall be fined not more than $5,000 or imprisoned not less than five years, or both. Whoever violates this subsection after one or more convictions under this subsection or subsection (b) or (c), or one or more convictions under section 406 relating to an offense under this section, shall be fined not more than $10,000 or imprisoned not less than ten years, or both.

"(b) Whoever, in committing, or in attempting to commit, any offense defined in subsection (a) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than $10,000 or imprisoned for not less than ten years nor more than life, or both. Whoever violates this subsection after one or more convictions under this subsection or subsection (a) or (c), or one or more convictions under section 406 relating to an offense under this section, shall be fined not more than $20,000 or imprisoned for not less than twenty years.

"(c) Whoever, in committing, or in attempting to commit, any offense defined in subsection (a) of this section, kills or maims any person, shall be imprisoned for not less than twenty years. Whoever violates this subsection after one or more convictions under this subsection or subsection (a) or (b), or one or more convictions under section 406 relating to an offense under this section, shall be imprisoned for not less than forty years.

"(d) Notwithstanding any other provision of law, the imposition or execution of any sentence under this section shall not be suspended and probation shall not be granted.

"(e) As used in this section, the term 'pharmacist' means any person registered in accordance with this Act for the purpose of engaging in commercial activities involving the dispensing of any controlled substance to an ultimate user pursuant to the lawful order of a practitioner.".

(2) The table of contents for the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 412 the following new item:

"Sec. 413. Robbery of a controlled substance from a pharmacist.".

(b) Section 406 of such Act is amended—

(1) by striking out "Any" and inserting in lieu thereof "Except as provided in subsection (b), any"; and

(2) by adding at the end thereof the following new subsection:

"(b) Whoever violates this subsection relating to an offense under subsection (a), (b), or (c) of section 413 after one or more convictions under such section or under this section relating to an offense under such section, is punishable by imprisonment or fine, or both, which may not exceed the maximum punishment for such offense prescribed in the last sentence of subsection (a) of section 413, the last sentence of subsection (b) of section 413, or the last sentence of subsection (c) of section 413, as the case may be.".

COLLECTION OF DATA

SEC. 5. In order to provide accurate and current information on the nature and extent of pharmacy crime, the Department of Justice shall collect relevant data and include pertinent results in its annual Uniform Crime Report.

II

97TH CONGRESS
1ST SESSION

S. 1339

To amend title 18 of the United States Code to prohibit the robbery of a controlled substance from a pharmacy.

IN THE SENATE OF THE UNITED STATES

JUNE 8 (legislative day, JUNE 1), 1981

Mr. HEFLIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend title 18 of the United States Code to prohibit the robbery of a controlled substance from a pharmacy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 103 of title 18, United States Code, is amended by adding immediately after section 2117 the following new section:

"§ 2118. Robbery of a pharmacy

"(a) Any person who takes property of another from a licensed pharmacy regularly engaged in the retail dispensing in interstate commerce of prescription drugs or devices, by force and violence, or by intimidation, and such robbery is part of a pattern of such robberies in the locality, shall be fined not more than $5,000, or imprisoned not more than ten years, or both.

"(b) For purposes of this section, the term 'property' means a controlled substance consisting of a narcotic, amphetamine, or barbituate that is listed in schedule I, II, III, or IV established by section 202 of the Controlled Substances Act (21 U.S.C. 812), the value of which is in excess of $100.".

(b) The table of sections for chapter 103 of title 18, United States Code, is amended by adding at the end thereof the following:

"2118. Robbery of a pharmacy.".

I

97TH CONGRESS
1ST SESSION

H. R. 2034

To amend title 18 of the United States Code to prohibit the robbery of a controlled substance from a pharmacy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1981

Mr. HYDE introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 18 of the United States Code to prohibit the robbery of a controlled substance from a pharmacy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 103 (relating to robbery and burglary) of title 18 of the United States Code is amended by adding at the end of the following:

"§ 2118. Pharmacy robbery

"(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, any material, compound, mixture, or prescription containing any quantity of a controlled substance, which belongs to, or is in the care, custody, control, management, or possession, or on the premises of any pharmacy, shall, in the case of a first conviction under this section, be fined not more than $5,000, or imprisoned not less than five years nor more than twenty years, or both, and in the case of a second or subsequent conviction under this section, be fined not more than $10,000, or imprisoned not less than ten years nor more than twenty-five years, or both.

"(b) Whoever, in committing any offense under subsection (a), assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than $15,000, or imprisoned not less than fifteen years nor more than thirty years, or both.

"(c) Whoever, in committing any offense under subsection (a), kills any person, shall be subject to imprisonment for any term of years not less than twenty or for life.

"(d) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by fine or imprisonment, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the conspiracy.

"(e) Not withstanding any other provision of law, with respect to any minimum term of imprisonment required under this section in the case of a person convicted under this section, the court shall not suspend such sentence and shall not give such person a probationary sentence with respect to such minimum, nor shall such person be eligible for release on parole before the end of such sentence.

"(f) As used in this section—

"(1) The term 'pharmacy' means any pharmacy engaged in commercial activities involving the dispensing of any controlled substance and registered pursuant to section 302 of the Controlled Substances Act (21 U.S.C. 822); and

"(2) The term 'controlled substance' has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802), as amended.".

SEC. 2. The table of sections for chapter 103 of title 18 of the United States Code is amended by adding at the end the following new item:

"2118. Pharmacy robbery".

SEC. 3. The Federal Bureau of Investigation shall include in its annual Uniform Crime Reports relevant data concerning pharmacy robbery in the United States.

SEC. 4. The Attorney General of the United States, not later than one hundred and twenty days after the date of the enactment of this Act (and once every six months during the three-year period following such one hundred and twenty-day period), shall submit a report to the Congress with respect to its enforcement activities relating to the offense described in the amendment made by the first section of this Act. Each such report shall include—

(1) statistics on the incidence of such offenses;

(2) statistics on the prosecution of such offenses and the disposition of those cases;

(3) an analysis of the impact of the amendments made by the first section of this Act on the operation, workload, and efficiency of the Federal courts;

(4) such other information as may assist in describing the activities of the Justice Department in the enforcement of the amendments made by the first section of this Act.

ADDITIONAL SUBMISSIONS

PREPARED STATEMENT OF FRANCIS M. MULLEN, JR., ACTING ADMINISTRATOR, DEPARTMENT OF JUSTICE

Chairman Mathias and members of the subcommittee, I am pleased to submit for the record the Drug Enforcement Administration's views on the serious problem of the theft of controlled substances from pharmacies. The work of this Subcommittee over the past years in addressing this matter has been very important and is commendable. Public attention to the problem of drug abuse is usually focused on drugs such as heroin although the abuse of pharmaceutical drugs and its attendant criminal activity is an equally serious threat to this society's well-being.

The diversion of legitimately produced controlled substances into the illicit market is one of the major drug abuse problems in the United States today. Various estimates indicate that controlled drugs diverted from legitimate sources may be involved in 70 percent of reported drug abuse injuries. Drug thefts from all parts of the legitimate distribution chain are a significant factor in this diversion problem. In 1981, over 40 million dosage units of controlled substances were diverted into the illicit traffic through theft.

The Drug Enforcement Administration has been concerned about drug thefts for several years. Because the majority of drug thefts occur in pharmacies, in 1975 the DEA conducted a study of pharmacy thefts. This study disclosed that there were many inexpensive methods that pharmacists could use to make their pharmacies less susceptible to burglary. This study was followed by the initiation of the Pharmacy Theft Prevention Program (PTP).

The PTP Program was designed as a community action approach and the success of individual programs is dependent upon the initative of local pharmacy groups. The pilot project was begun in St. Louis in 1977 and reduced pharmacy burglaries by 55 percent and armed robberies by 46 percent. Following the success of the pilot program, DEA expanded the program to a number of interested communities.

The nucleus of these PTP Programs is the leadership in the community. Usually, city or county pharmaceutical associations initiate the program and include representatives from the police department and from DEA as members of their executive committee. The PTP Program conveys information to the individual pharmacies in the community on available security devices, burglary prevention techniques, and other options available to them in their efforts to suppress pharmacy theft.

Despite the fact that overall local interest in PTP Programs has declined in the last two years, DEA is still willing to devote some of its limited resources to this program area. Pharmacists who are concerned about the increasing incidence of drug thefts in their community are encouraged to contact their local DEA office and discuss the PTP concept in detail with the field investigator.

For several years, the PTP Program was the DEA's primary response to the drug theft problem; however, the dramatic increase in the use of force and violence in recent years has required a review of our drug theft policy. The use of violence in drug thefts doubled from 1976 to 1980. In 1976, only 10% of all thefts involved armed robbery. In 1981, armed robberies accounted almost 20% of all thefts. The violence associated with these thefts is of considerable concern to the DEA.

Consequently, in December 1980, DEA revised its position on drug thefts and subsequently advised the pharmaceutical community that although the bulk of the enforcement responsibility must continue to rest with state and local agencies, DEA believe that there is potential for a Federal role because of the violence associated with many of these crimes. In this regard, we strongly support the pharmacy robbery provision of the Violent Crime and Drug Enforcement Improvement Act of 1982 (S. 2572).

The Federal government cannot expend its limited resources to investigate the majority of drug theft crimes. Such use of resources would be inconsistent with the Federal government's mandate to concentrate its efforts on major drug trafficking situations. Enforcement statistics indicate that the successful apprehension of a robbery suspect is directly related to the time elapsed prior to the arrival of the police. Local police departments are best equipped to respond quickly when a crime occurs, and because of this the DEA believes that they are better suited to deal with the drug theft problem. If Federal legislation were passed, the Federal government would investigate only major drug thefts, which include both elements of violence and large drug losses. These would be complex investigations which would be more appropriate for Federal efforts.

DEA's record of cooperation and assistance to pharmacists has been excellent, and we will continue to cooperate to the fullest extent possible in any appropriate measure to reduce drug thefts.

I thank you for this opportunity to express DEA's views on this matter, and for the Subcommittee's interest and support in the effort against illegal narcotics trafficking.

STATEMENT OF NATIONAL WHOLESALE DRUGGISTS' ASSOCIATION

INTRODUCTION

For the Subcommittee's background, the National Wholesale Druggists' Association (NWDA) is a leading trade association in the drug industry comprised of some 300 full-service wholesalers, 250 major manufacturers of products sold through wholesalers, and almost 65 other organizations having a stake in drug wholesaling. The wholesalers are Active members, and the remainder are Associates.

It is estimated that total U.S. drug wholesaler sales were $8.74 billion in 1981. Of this total, nearly 65 percent of $5.68 represents pharmaceutical sales to retail, chain and hospital pharmacies,

The distribution of pharmaceuticals has evolved and improved significantly during the 1970's Drug wholesalers, once labor intensive suppliers of pharmaceuticals, are now a high technology, computer intensive, service oriented industry. The operations efficiences generated by the application of computer technology have reduced the cost of doing business. Due to the highly competitive nature of the drug wholesale business, most of the cost reductions have been passed onto retail customers in the form of lower product prices and higher service benefits.

In 1971, drug wholesalers accounted for 46 percent of manufacturers' direct trade, In 1981 drug wholesalers are accounting for nearly 60 percent of manufacturers' direct trade—a 30 percent increase in ten years. There has been tremendous growth in drug wholesaling which now accounts for nearly 80 percent of the dollar volume of pharmaceuticals which are destined for community pharmacies throughout the nation.

Drug wholesalers recognize the need to provide services to the community pharmacies to strengthen their ability to compete. These services include voluntary advertising programs, plan-o-gramming, in store promotions, electronic order entry, customized price stickers, shelf labels for inventory control, automated retail accounts receivable, management information reports, product movement reports, third party processing systems, microfiche price information systems, retail price information guides, scientific reorder controls, special buys reports and retail accounting services.

Retailer-to-Wholesaler electronic order entry has grown rapidly. In June of 1979, it accounted for 41 percent of wholesale orders—1980 it represented 56 percent of orders. The most recent survey shows 65 percent of our members' orders received from retailers were through electronic order entry. By now, it is probably 81 percent.

These increased service have enabled community pharmacies to significantly reduce their inventories of controlled substances. Drug wholesalers have had to increase their inventories of pharmaceuticals, thereby increasing their inventories of controlled substances.

The increase in drug wholesalers' inventories of controlled substances and the alarming increase in total crimes attempted against pharmacy convince us the Federal Pharmacy Crime legislation is needed now. It should contain mandatory fines and imprisonment depending upon the seriousness of the offense. No sentence imposed should be suspended or probation granted. Further, equal protection should be given to all segments of the industry responsible for providing controlled substances for legitimate medical use. Therefore, any legislation should cover all registrants under the Controlled Substances Act.

PHARMACY CRIME LEGISLATION IS NEEDED

The need for Pharmacy Crime Legislation was clearly established during the June 17, 1982, Criminal Law Judiciary Subcommittee Hearing.

Under existing law, the manufacture, distribution, disposal and prosession of a controlled substance are all subject to federal criminal prosecution and penalties. The theft of a controlled substance is the only act not covered by federal penalties. It seems unfair that, based on the Federal Controlled Substances Act, registrants may be subject to federal civil and criminal prosecution for wrongfully manufacturing, distributing or dispensing a controlled substance. Yet when a DEA registant is a victim of an armed robbery involving a controlled substance, there is no violation of federal law. The Federal Government has continuing responsibility in this area.

Senator Hyde testified that as the Drug Enforcement Administration becomes more effective in controlling the traffic in illicit drugs, the more criminals and junkies turn to readily available sources, such as the local pharmacist. The criminal has turned to the local wholesale druggist as well. Burglaries, robberies and thefts of wholesale druggists' warehouses have risen significantly over the past ten years. In 1981, one out of every four warehouses was attacked.

In 1979, and 1980, a thirty-three year old addict, his wife and two purported accomplices attacked at least 12 wholesale druggists and planned numerous attacks on others. They also attacked pharmacies. Trey Duke, manager of the Pensacola Florida Division of I. L. Lyons & Co., Ltd., was one of the first victims. Mr. Duke used every effort within his means to help apprehend the addict Freddie Johnson. His account of these efforts follows:

"I was sitting in my office, on August 20, 1980, with a security contractor, when I received a much awaited call from agent Bill Williamson, with the Miami region of the DEA. When he asked me if I was sitting down, I knew that Freddie Johnson had struck again. However, this time the news was good. Freddie had been caught in San Marcos, Texas, the day before. In his possession was a .38 caliber revolver, $10,000.00, a quantity of dilaudid and cocaine, and a fist full of safety deposit keys. Johnson was wanted on numerous counts of armed robbery, simple kidnapping, possession of a firearm, resisting arrest, distribution of narcotics, possession of narcotics, diversion, assault with a deadly weapon, and failure to appear in court. He was addicted to Dilaudid. His robbery spree apparently began in Pensacola, Florida, at I. L. Lyons, and Company, Ltd., on September 18, 1979, and continued to spread across the country like a road map until his capture. Other known victims included:

"1. Tennessee Wholesale Drugs, Nashville, Tenn., October 23, 1979.

"2. Southwestern Drug Co., Belaire Division, Houston, Tex., February 7, 1980.

"3. Chapman Drug Company, Knoxville, Tenn., March 25, 1980.

"4. Drug Mutual, Atlanta, Ga., April 10, 1980.

"5. Lexington Economy, Lexington, Ky., May 7, 1980.

"6. Southwestern Drug Co., Dallas, Tex., May 13, 1980.

"7. Los Angeles Drug Co., Anaheim Division, Anaheim, Calif., June 11, 1980.

"8. Southwestern Drug Co., Belaire Division, Houston, Tex., July 3,1980.

"9. I. L. Lyons & Co., Ltd., Baton Rouge Division, Baton Rouge, La., July 24, 1980.

"10. I. L. Lyons & Co., Ltd., New Orleans Division, New Orleans, La., August 9, 1980.

"11. Narco Drug Company, University City, Mo., August 13, 1980.

"Other than these robberies, he was positively identified in I. L. Lyons & Co., Ltd. New Orleans, on July 15th, while applying for a job. He was also identified in Amfac Drug Co., Metairie, La., on July 21st., while inquiring about a job, and again at Davis Wholesale Drugs, Baton Rouge, La., while he was casing the outside perimeter of the building.

"Until his second hit at Southwestern in Houston on July 3rd., his M.O. had remained relatively the same. At Southwestern, he made a bomb threat, which turned out to be a bottle in a box. In New Orleans, he held a sales manager and his two year old daughter hostage for 4½ hours, while threatening that the manager's house was under surveillance and would be blown up if he did anything to stop him. He also stated that he would kill the manager and his daughter if they did not cooperate fully. In Narco Drug, he threatened to turn the manager's house into a "blood bath" if they did not co-operate.

"Though he apparently operated alone while performing the robberies, the indications are that he had an accomplice. His wife is certainly suspected but the involvement of others is not ruled out. Toward the end of his spree he appeared to become overconfident and was in the habit of calling his victims to congratulate them for performing their functions calmly considering the circumstances.

"During the 11 months that Johnson preyed upon the Wholesale Drug Industry, he was arrested in Knoxville, Tennessee for possession of Schedule II drugs on December 4, 1979. He posted bond, and was released. His lawyer bound him over to the Nashville Police where he was booked on January 20, 1980. He appeared before the courts in Pensacola, and posted bond on April 25th. He appeared again in Knoxville and posted bond on the Knoxville offense and the Lexington offense on May 28th. He neither appeared nor was arrested again until his final capture on August 19th. Till then, his only legal contact had been Ralph Harwell, a practicing attorney in Knoxville, Tennessee.

"Between the 15th of May and the 10th of June, I contacted the NWDA and requested that a security bulletin be turned out concerning Freddie Johnson so that we could better coordinate the efforts our industry, local, state, and federal authorities in his eventual capture. Due to the necessity in today's society for the victim to protect himself legally, the bulletin was not issued from NWDA until June 25th. In the meantime, he had struck again, this time in California.

"After the circulation of this document, our fugitive struck 4 more times and was identified in 3 additional locations as well. With the exception of my own communication with the NWDA, the only wholesaler to comply with the bulletin was Narco Drug Company of University City, Missouri (ironically not an NWDA Member).

"A short time before I called NWDA requesting the bulletin, I placed a call to the DEA office in Miami to see if they could assist me in my personal investigation of these robberies. At the time, I had correlated 7 robberies, knew his name, 2 of his aliases, had a mug shot, had interviewed victims in all 7 robberies and even knew his family address. Upon discussing this matter with DEA, I was astonished to find that they had not made a correlation between any of the robberies at that time.

"Now, back to August 20, 1980. The critical factor was coordinating all of the different agencies so that Johnson was not released on bond again before all of the additional warrants and indictments arrived. Before I could hang up the phone, I received a conference call from Dick Cook (NWDA Director of Operations) and Larry Weber. Coincidentally, they wanted to discuss an updated security bulletin on the robberies. I filled them in on the somewhat sketchy details and proceeded to find out who was handling the case in San Marcos.

"I contacted the Department of Public Safety, Narcotics Division, in San Marcos, Texas, and found that Charles Goforth was the officer in charge of the investigation. Also, there were other members of the department that were to prove very helpful in communicating the total sequence of events to me. They were Jess Hooper, the officer responsible for the actual surveillance and arrest: Jim Murray, Captain of the Department; Fred Thomas, DEA agent for the Austin area; also Louis Fisher and Bill Williamson, in the Miami office of DEA, for spearheading the transfer of warrants to Texas. We (Louis, Bill, and I) knew that the primary concern was to squelch any efforts to have Freddie released on bond before the necessary warrants and indictments arrived in Austin. As usual, the problems started with interdepartment communications. At one time there were directives going out to have the warrants sent to the Hayes County Sheriff's Office, the San Marcos Police Department, the Department of Public Safety, the Austin FBI Office, and the Austin DEA. We had Fred Thomas contact Charlie Goforth to coordinate a receiving location for the teletypes and Bill Williamson and I started calling local authorities to have the warrants forwarded. I called the robbery victims in 5 of the cities so they could throw additional emphasis on the urgency of the matter. Even with all of the energy invested, it was still 2 days before the majority of the warrants were received in Austin. By this time, Freddie had done a far better job then we could have ever done of convincing the authorities not to release him. On the afternoon of his arrest, he had assaulted an officer, and later that evening he attempted to walk out of jail. The next day, he attacked 2 orderlies in the local hospital before being subdued by officers, and later the same day, he threatened to kill a DEA agent with a pistol that he had taken from a local patrol car. This last attempt happened in the following manner. On Wednesday afternoon, August 20th, the San Marcos authorities transferred Freddie from Hayes County to Austin. In the process, they stopped at a service station for gas and to transfer Freddie from the back seat to the front because he was sick. They continued to drive into Austin. Upon applying the brakes, a 9mm pistol slid from under the front seat. Freddie picked up the pistol and placed it to the attending DEA agent's head and said, "I'm going to kill you". Fortunately, the gun was knocked away, the agents wrestled the gun from Johnson and subdued him again.

During this time, Freddie's wife was having convulsions and was transferred to the state hospital. Before she was allowed transfer, the Justice of the Peace in San Marcos made her list all of their offenses to present. She explained that the procedure was to go to a city, lease a safety deposit box for 1 year, and buy a car. After performing the robbery, they would stash their drugs until they left town. Then they would clean out the box, either give away or abandon the car, and travel by private airline to their next location. There were apparently 2 other people involved in the organization that took care of fencing, casing, and transportation. Freddie's wife also gave the following account of their addiction. They supposedly took 6 x 4 mg. Dilaudid tabs, boiled them down, and drew them into a syringe. After preparing 4 syringes, they would shoot 24 mg. into each arm and repeat this process every 2 hours. In addition, Freddie supposedly went through 1 oz. of clinically pure cocaine every 48 hours. Considering that street sales are usually cut at least 10 to 1 at $2,000.00 a cut, Freddie's cocaine habit alone amounted to an approximate street value of $70,000.00 a week. (We are assuming that he did not take Sundays off.) Dilaudid 4 mg. has a reported street value which is equivalent to approximately $40.00 a tab. At 576 mg. a day each, he and his wife were on a Dilaudid habit that equaled $350,400.00 a month. The combined yearly total of their habits, at this rate, equal $7,844,800.00.

UPDATE SEPTEMBER 8, 1980

"This morning I received a call from Austin, Texas, stating that Shelly Johnson's father and a physician had sweet talked another judge into reducing her bond from $200,000.00 and had her released for $3,500.00 cash!!!!

"Shelly has been most cooperative in the information she has supplied concerning the robbery spree and related incidents. She stated that they had an accomplice who has been just as heavily involved in all but 2 of the robberies as Freddie. His name is Tommy McKeehan, 842 Avenue "A", Knoxville, Tennessee.

"Tommy McKeehan has an arrest record in Knoxville and we are in the process of acquiring mug shots. At the time of this writing, he has long blond hair that he wears in a pony tail, he has the same build as Freddie Johnson and list his occupation as Merchant Marine. He sails out of New Orleans.

"Tommy's mother, Riba McKeehan England, age 58, who has the same address as Tommy, has supposedly been dealing in Dilaudid from a church across the street from her home. She has been keeping narcotics and money buried in the woods. She has been dealing in Dilaudid for 10 years.

"Shelly Johnson, also stated that she (Riba) was also dealing in counterfeit money. (Freddie Johnson in separate conversation has stated that he wanted to talk to the authorities about counterfeiting.)

"While in Houston, she was defended by Richard 'Racehorse' Haynes on 2 drug related first degree murder charges. Haynes was able to get her out on bond by pleading self defense.

"Freddie Johnson has been moved from San Marcos to Austin to Georgetown for security reasons. To date, he has tried to bribe 5 different officials at the Austin jail, offering $10,000.00 each time.

"It is known that Shelly Johnson and possibly Freddie Johnson have had contact with Tommy McKeehan. Shelly stated to local Austin authorities that in the summer of 1979 Freddie, Tom and she went to New York and drove to New Jersey everyday to stake out the Knoll Pharmaceutical Distributorship for a robbery attempt on the United States Dilaudid supply center. In recent weeks conversation from McKeehan to Shelly Johnson indicated that McKeehan wanted Shelly to accompany him to New Jersey for the purpose of attempting this robbery. The purpose of this robbery was to secure enough funds to have Freddie Johnson released on bail. In turn, Shelly Johnson told authorities that she did not think that Tommy McKeehan had enough guts to pull it off, but that he had discussed, with her, the fact that he was going to review the previous robberies committed by Freddie Johnson and pick out those that presented the least resistance and hit them again, in order to raise enough money for Johnson's release.

"ADDENDUM 1

"Evening of September 1, 1980. Burglary attempt on Knoll Distributorship in New Jersey. (Detective John Sheraton, 201-887-0322, Hanover Township Police Department:)"

CONCLUSION

Controlled substance robberies of Drug Enforcement Administration registrants must be made federal offenses. NWDA strongly supports H.R. 6364, sponsored by Congressman Hyde, which extends the protections of H.R. 2034 to all registrants.

While NWDA can support all of the legislative proposals discussed, with some reservations, we feel that final legislation must include:

1. All DEA registrants,
2. Mandatory minimum bonds,
3. Mandatory minimum sentences, and,
4. No probation or parole allowances.

The National Wholesale Druggists' Association would like to thank the Subcommittee for allowing us this opportunity to express our view in this forum. We urge the Subcommittee's prompt action to report out a favorable piece of legislation. We stand ready to assist and work with you.

Thank you.

REVCO D.S., INC.,
Twinsburg, Ohio, June 18, 1982.

Hon. CHARLES MCC. MATHIAS, Jr.,
U.S. Senate, Criminal Law Subcommittee,
Senate Judiciary Committee, Washington, D.C.

DEAR SENATOR MATHIAS: As you are aware the Subcommittee on Criminal Law will be considering the bills S. 661 and S. 2572, which would make robbery of a pharmacy a federal crime. We applaud your efforts in having these bills considered and urge you to support their passage.

Revco D.S., Inc. operates 32 pharmacies in your state and over 1,550 retail pharmacies in 28 states. We are one of the major dispensers of pharmaceuticals to retail consumers. We are vitally concerned for the health and welfare of our customers and also our employees.

In regard to the Senate Hearings on Pharmacy Crime Legislation now being conducted, we would like to pass on information concerning our experiences with robberies. This information was compiled from reports submitted to the Security Department of our stores.

The armed robbery rate involving Revco stores increased 30 percent in fiscal year 1982 over the incident rate in fiscal year 1981. In 90 percent of the armed robberies a weapon was identified. Revco had 2 pharmacists (Store Managers) shot in fiscal year 82. Fortunately both survived. In addition to this, 2 pharmacists were "pistol whipped" and one Revco customer was shot in the leg. Over 60 percent of the armed robberies were drug related. The most common drugs taken from Revco stores during armed robberies were Dilaudid, Preludin, Demerol, Percodan, Dexadrine, Tussionex, and Desoxyn.

72 percent of the armed robberies were committed by one person, which indicates a spur-of-the-moment occurence by nervous drug users, who apparently needed a fix, or to obtain cash to buy drugs. As I previously stated, this type of person is more prone to use violence when either resisted or confronted by authorities.

The social costs involved with an armed robbery of a pharmacy are great and deserve the attention of the federal government. The federal government is spending millions of dollars to discover, apprehend and prosecute persons involved in illicit drug sales and use. However, the actual source of supply (retail pharmacy) is not given the protection of the Federal Code.

By making pharmacy robbery a federal offense, greater coordination between law enforcement agencies could provide a deterrent to organized efforts of pharmacy robbery.

We urge you to support the legislation which makes pharmacy robbery a federal offense. If you have any questions or comments, please don't hesitate to contact us.

Sincerely,

MARTIN ZEIGER,
Vice President, General Counsel, and Corporate Secretary.

MR. AND MRS. WALTER T. WILLIAMS,
Sioux City, Iowa, June 14, 1982.

D. J. Williams,
Webster City, Iowa.

DEAR DAR: I am writing this letter as a followup to our conversation at the IPA Convention. If this letter can help in the passage of a strong pharmacy crime law, then please use it.

We are a pharmacist and wife type operation. We have had 13 breakin robberies since we opened in 1971. Not all resulted in large loses but many resulted in the total loss of all our Class 2 narcotics and other dangerous drugs. We have improved our alarm systems to the point that we created a new problem. We now have had 2 armed robberies. In both cases we were told we would be killed if we didn't comply.

Both armed robberies again resulted in the total loss of all Class 2 narcotics and other dangerous drugs.

None of the drugs were recovered and I would assume were sold on the streets of Sioux City. Two other stores here have had armed robberies and many more have had breakins. That is a lot of dangerous drugs in the wrong hands.

I think a stronger crime law in pharmacy could help prevent some of this in the future.

Yours truly,

WALT WILLIAMS, RPH.

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